87-387

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. _____

* *

DEBRA HEYDEN,

Petitioner,

vs.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE, STANLEY
KERKMAN, EUGENE BILOTTI,
JAMES FONK, and
DONALD ANDREOLI,

Respondents.

* *

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

Whether the time is ripe for this Court to set objective and consistent standards in employment gender discrimination cases under the 14th Amendment to the United States Constitution and Sec. 42 U.S.C. Sec. 1983.

Whether Federal Courts need further clarification of the standards to be applied in gender discrimination cases under the 14th Amendment to the United States Constitution and 42 U.S.C. Sec. 1983.

PARTIES TO THE PROCEEDING

All parties to the proceeding are contained in the caption.

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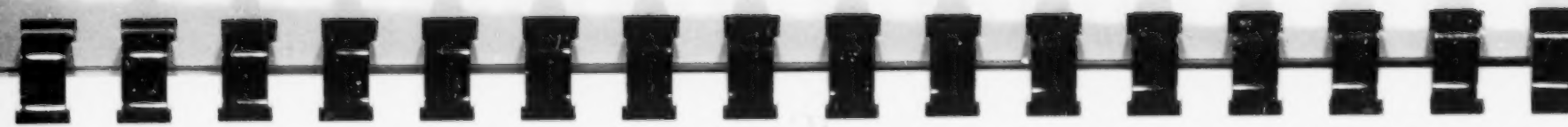

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OPINIONS BELOW

The judgment of the Court of Appeals (App. A) adopts in full the opinion of the District Court (App. B) which is reported at 640 F. Sup. 1274 (E.D. Wis., 1986), sub. nom. Sebetic v. Hagerty (App. B)

JURISDICTION

The judgment of the Court of Appeals (App. A) was entered on 5/21/87. Jurisdiction at the trial level was premised on 28 U.S.C. sec. 1331 and 28 U.S.C. sec. 1343(3). The appeal to the Court of Appeals was taken pursuant to 28 U.S.C. 1291. The jurisdiction of this Court is involved under 28 U.S.C. sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provision

involved is the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution. The statute involved is 42 U.S.C. sec. 1983 and 42 U.S.C. sec. 1985. These are reproduced in Appendix C.

STATEMENT OF THE CASE

This is a suit brought under 42 U.S.C. Sec. 1983 and 42 U.S.C. sec. 1985, by Debra Heyden on 10/23/85 before the District Court for the Eastern District of Wisconsin. Ms. Heyden's claim for damages was based upon respondents' violation of her fundamental right to marry under the Due Process Clause of the Fifth Amendment as interpreted through the Fourteenth Amendment to the United States Constitution and upon respondents' violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, by denying her employment based upon sex discrimination.

Cross motions for summary judgment were filed with the trial court pursuant to Rule 56, Federal Rule of Civil Procedure. On August 12, 1986, the trial court granted summary judgment in favor of respondents and dismissed petitioner's complaint, awarding costs to respondents.

Debra Heyden filed a timely appeal with the U.S. Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. Sec. 1291. The Court of Appeals affirmed the judgment of the District Court on May 21, 1987.

In 1982, Kenosha City and County Joint Services was organized as a separate governmental employment unit to provide dispatch, clerical, and complaint taker services to the Kenosha Police Department, Kenosha County Sheriff's Department, and Kenosha Fire Department. Prior to 1982, the Kenosha Police Department, Kenosha County Sheriff's Department, and Kenosha Fire Department had utilized sworn officers within their

respective departments, to perform these duties.

On or about September 14, 1982, plaintiff Debra Heyden, a certified dispatcher for the Pleasant Prairie Police Department, a nearby township, who had earlier in September applied for the position of dispatcher with the Kenosha City and County Joint Services was advised that her application, which had mistakenly been filed as a clerical application was reinstated. On September 20, 1982, Debra Heyden passed the interview phase of application for employment. On September 29, 1982, Debra Heyden passed the written examination phase of application for employment. On September 29, 1982, Debra Heyden was advised by Mario Basuli, the manager for Kenosha City and County Joint Services that the job was hers and she would be told when to report to be fitted for a uniform. On September 30, 1982, Debra Heyden gave notice of resignation to her

present employer, Pleasant Prairie Police Department. After resigning her employment with Pleasant Prairie Police Department, Debra Heyden was never notified when she could report for work with Kenosha City and County Joint Services, nor until November, 1982, and December, 1982, was she advised as to why she would not be permitted to report to work.

On or about October 27, 1982, Kenosha City and County Joint Services board met and adopted the following policy rule:

> "policy was set by the board that a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher and that the two wives who were the subject of the discussion would be offered a position in the records department." (See App. D)

The adoption of the policy affected Debra Heyden because she was and had at all times relevant been married to Richard Heyden, a Deputy Sheriff for Kenosha County. This policy also affected

Beverly Sebetic who was at that time employed as a dispatcher for Kenosha City and County Joint Services and married Deputy Sheriff Sebetic on December 17, 1983. They are the two wives referred to in the policy as adopted. Ms. Sebetic also filed an action which was resolved successfully through the State Administrative Agencies and is not before this Court. Also impacted, but unaffected by the policy as adopted was Kip Keckler, a dispatcher whose wife was a firefighter for Kenosha Fire Department.

On November 26, 1982, Debra Heyden and her spouse met with the Director of Joint Services, Roger Schoenfeld and were orally informed that based upon the policy he had recommended and which was adapted by the Kenosha City and County Joint Services, she would not be hired as a dispatcher. On December 14, 1982, Debra Heyden received written notification from Schoenfeld that she would not

be hired as a dispatcher for Kenosha City and County Joint Services based upon the policy adopted by the Board on October 27, 1982. On July 25, 1983, Debra Heyden was offered and accepted employment by Kenosha City and County Joint Services in their records division. The position she accepted in the records division of Kenosha County and Joint Services is a lesser paying position and not the position she sought in September, 1982.

REASONS FOR GRANTING THE WRIT

I. FEDERAL COURTS WILL BE REPEATEDLY REQUESTED TO ADDRESS THE VALIDITY OF NO-SPOUSE EMPLOYMENT RULES TO DETERMINE WHETHER THEY CONSTITUTE SEX DISCRIMINATION UNDER 42 U.S.C. SEC. 1983.

A.1. The Petition Should Be Granted Because The Increase of Women In The National Labor Force Coupled With The Concentration of Women In Low Paying Jobs Cannot Be Adequately Addressed Under Titel VII, 42 U.S.C Sec. 2000e et. seq.

Looking at the national data beginning with the year 1900, women were estimated to be 18.1% of the total labor force. Near the close of WWII, the labor

force consisted of 30% women. Since 1950, increase in female labor force participation has been steady, and by 1979 women constituted 41% of the national labor force. (See App. E.) If the number of women workers continues to increase at the present rates, by 1995 it appears a virtual certainty women will constitute 50% of the U.S. labor force.

The largest numerical and statistical increase of women in the labor force was observed in the 1970-1980 decade. (See App. E). It was also during this decade no-spouse rules began reaching the Federal Courts primarily through Title VII litigation as sex discrimination or sex discrimination based upon marital status. The results have been varied, as have the standards. While Title VII makes it unlawful for an employer to discriminate against any individual because of sex, (42 U.S.C.S., Sec. 2000e-2(a), Sec. 1[c] unless sex is a bona fide occupational qualification

reasonably necessary to the operation of the employer's business, it does not specifically address itself to an employer's use of distinction based on marital status. However, E.E.O.C. decisions and regulations indicate that such distinctions may constitute sex discrimination under Title VII. (29 CFR Sec. 1604.4).

Decisions under Title VII have held that employer distinctions based on marital status might be justified as a bona fide occupational qualification under 42 U.S.C.S. Sec. 2000e-2(e)(1). Phillips v. Martin Marietta Corp., 400 U.S. 542, 27 L. Ed.2d 613, 91 S. Ct. 496 (1971). Only when the marital status distinction has been applied differently between males and females have courts found such distinctions to constitute sex discrimination. Stroud v. Delta Air Lines, Inc., 544 F.2d 802 (1977 CA 5 GA). Sprogis v. United Air Lines, Inc., 444 F.2d 1194, (, CA 7 ILL. 1971) cert.

den. 404 U.S. 991, 30 L. Ed.2d 543, 92 S. Ct. 536. In Sprogis, a no marriage policy was struck down as discriminatory because male stewards were permitted to marry but female stewardesses were not. But in Stroud, a no marriage policy of an airline which hired only female flight attendants was held not to constitute sex discrimination because there was no dissimilarity in treatment between the sexes.

No spouse rules involving co-employees have generally been upheld as not constituting sex discrimination, even though the results of these rules has had the effect of loss of employment or income on female spouses. In Harper v. Trans World Air Lines, Inc., 525 F.2d 409 (1975 CA 8 MO), the Court upheld a rule requiring that spouses could not work in the same department, so the couple first must decide which spouse would resign, and if the couple could not agree, required the junior in seniority

to resign. In Yuhas v. Libby-Owens Ford Co., 411 F. Supp. 77 (1976 DC ILL.), the Court found a prima facie case of sex discrimination where 71 women and only three men were excluded from employment based upon a no-spouse rule, but upheld the no spouse rule because of the plausible assumption that it is generally a bad idea to have both partners in a marriage working together. Accepting the employer's speculative reasoning, the Yuhas court agreed that:

1) Married employees would not be able to set aside the intense emotions of their marital relationship in the work place.
2) Married employees could be expected to take the same side in a grievance or labor dispute.
3) Married employees might result in one spouse being placed in

a supervisory capacity over the other.

4) Married employees might intervene in the hiring process on behalf of one another.

The Yuhas decision is considered a leading case under Title VII in consideration of no-spouse rules. Yet, even often finding a prima facie case of sex discrimination, the Yuhas Court was swayed by "business necessity", and allowed the employer to continue a practice which clearly discriminated against women.

At one time, no spouse rules were upheld as management's prerogative. This is no longer the case. Courts and legislatures are beginning to develop limitations on these rules as married women become a greater percentage of the nation's labor force. While some no-spouse rules may promote legitimate employer concerns, many are based on

archaic and stereotypical notions concerning married women, the spousal relationship, and the family as it exists in our country today. Oft-times in reviewing the validity of no-spouse rules, fact finders are unintentionally caught in their own cultural biases for it is difficult to abandon cultural conclusions today, that seemed logical yesterday. For example, see Goesaert v. Cleary, 335 U.S. 464, 466, 93 L. Ed. 163, 69 S. Ct. 198 (1948), where the legislatures' right to preclude women from bartending on the ground that legislatures could devise preventative measures against moral and social problems that result when women tend bar. See Stanton v. Stanton, 421 U.S. 7, 43 L. Ed.2d 688 95 S. Ct. 1373 (1975), wherein the Court struck down a state statute that specified a greater age of majority for males than for females and found that the gender based classification was based upon traditional

assumptions that

> "the female is destined solely for the home and the rearing of the family and only the male for the marketplace and the world of ideas . . ." 421 U.S., at 14-15, 43 L. Ed.2d 688, 95 S. Ct. 1373.

The Goesaert and Stanton cases stand for rules which were thought at the time of inception to be reasonable. Few people could argue that the underlying premises about women embodied in Goesaert and Stanton concerning women would be found valid today.

Yet, in an age when 41% of our labor force is female and when 60% of all married couple families have two wage earners (Bureau of Labor Statistics of the U.S. Department of Labor, 1979), we cling to outmoded ideas concerning spouses in the workplace. Because of the historic dominance of men in the labor force, no spouse rules will more often than not, operate to preclude married women from employment. This is especially true in smaller communities

where there are limited employment opportunities. If a married woman, otherwise qualified is denied employment because her husband is already employed by the community's major employer, she is required to seek employment elsewhere which often results in lower paying employment, underemployment or no employment. The impact of such a result is felt throughout the community because it is frequently the wife's earnings which raise a family out of poverty. In 1979 14.8 percent of husband-wife families were poor when the wife did not work; 3.8% when she was in labor force. (See App. F)

Nor is it any secret that women workers are concentrated in low paying dead end jobs. The average woman worker earns only about 3/5 of what a man does even when both work full time year around. (See App. F) In Califano v. Webster, 430 U.S. 313, 51 Ed.2d. 360, 97 S. Ct. 1192 (1977), this court upheld a

statute conferring greater benefit to women than men because in part, the statutory scheme took into account that women "as such have been unfairly hindered from earning as much as men . . . " Id, at 318, 51 L. Ed.2d 360, 97 S. Ct. 1192.

Economic sex discrimination against women intentional or "unintentional" is one of the most invidious forces in our society today. Its causes are many, but identifiable causes, such as no-spouse rules which embody prejudices and worn out ideas, can and should be removed as impediments to employment. The underlying assumption society erroneously concludes about women is that they will be wives and mothers, they will work to supplement incomes, and therefore have a casual attachment to the labor force. Yet, with our inflated economy and reduced standard of living, nearly 15% of all husband-wife families will find it necessary for both spouses

to be fully employed in order to rise above poverty. To avoid the heavy burden to society imposed by the impoverishment of women workers any identifiable obstacle to the improvement of women's earning power in this country should be closely and carefully scrutinized.

No-spouse rules are an impediment to employment. While facially purporting neutrality because a spouse can theoretically be a man or a woman, reality is that no case has yet been decided where a man has been economically disadvantaged or denied employment because of a no-spouse rule. The impact of these rules has fallen squarely upon working wives and their families. While not overtly stating that wives will not be hired where husbands are already employed, no-spouse rules are a covert gender based classification because the rule will seldom, if ever, affect men. Husbands do not seek employment where wives are employed because wives along

with other women are concentrated in low paying dead end jobs. Wives who have otherwise obtained the necessary qualifications, will however seek employment in areas where husbands are employed because men historically occupy higher paying jobs. Sex discrimination is often pervasive and subtle, Caban v. Mohammed, 441 U.S. 380, 398 60 L. Ed.2d 297, 99 S. Ct. 1760 (1979), and can be embodied in rule of neutral in appearance, but when reality is considered, the rule may be far from neutral. To correct the low status of women in the labor force, and to remove identifiable impediments to improve women's economic position, no-spouse rules must be considered covert gender discrimination, and examined carefully to determine if a woman being married is a bona fide employment consideration or the stereotypical speculations of an employer who is reluctant to relinquish his historical prerogative, and has no market

force motivation to hire wives when an adequate supply of qualified men are available.

When courts rule on no-spouse regulations in a Title VII case, their focus is on balancing the claimed harm with the business necessity offered by the employer. The national condition of women in the labor force is beyond the scope of their review. The employer's prerogative is therefore often allowed to stand, as in Yuhas, to the detriment of women.

A.2 The Petition Should Be Granted Because No-Spouse Rules Are Formulated Upon Stereotypical Thinking That Operates To Preserve Sex Discrimination In the National Labor Force.

Employers offer many varied reasons for justification of no-spouse rules. Some have potential merit and some do not. The most frequently offered justification for no-spouse rules, indeed, one which seems to recur in every case is that "the mix of feelings which typically attends the marriage

relationship", Sebetic v. Hagerty, 640 F.Supp. 1274, 1275 (E.D. Wis. 1986), would be a negative force and detrimental in the workplace. A variation on this theme was propounded by the Yuhas Court wherein the Court agreed that married employees would not be able to set aside the emotional aspects of their marital relationships in the workplace.

Married couples do undoubtedly have emotional attachments to each other. Whether or not these emotional bonds would interfere with or even enter into the workplace is purely a matter of speculation. There is no empirical data or objective studies to support this belief. Is the implication that married couples are less emotionally stable than their unmarried counterparts? Highly unlikely, where the financial survival of the home, and family depends on both spouses obtaining and maintaining their employment. Highly unlikely, where the attendant responsibilities of marriage

generally operate to make people more responsible and reliable. Is the implication that married couples are unable to escape their emotional attachment when pitted together in a work task? Highly unlikely. If that were the case, the western frontiers of this county would have ended on the Atlantic seaboard. What then is the underlying assumption upon which so many employers and courts base their belief that married couples cannot competently labor side by side in the workplace? If married couples are successfully working together in their homes and with their families, why would they abandon that behavior in the workplace? Although unproven by empirical data or objective studies, this belief, more than likely emerges from the old and erroneous concept that women have only a casual attachment to the labor force and will therefore treat their employment less seriously and permit marital disputes to intervene in the

workplace. Who does society and the employer mistrust as far as emotional sobriety in the workplace, is it the husband, the couple, or is it in fact the wife?

Further, it is not only married couples who have heightened or intense emotional bonds. Following the Sebetic and Yuhas rationale, the "mix of feelings" which would supposedly create havoc in the workplace can also be found between parents and children, siblings, other relatives, lovers, and close friends. There is no rationale to single out the marriage relationship from other close human relationships as presenting potential problems in the workplace. It is profoundly insulting to single out the most stable human relationship in our culture and brand it a detriment in the workplace. As discussed previously, although expressed in terms of the marriage relationship, the detriment falls not on husbands, but on wives.

Other justifications for no-spouse rules, such as: spouses may take the same side in grievances or labor disputes, spouses may intervene for each other in the hiring process, or spouses might be in a position to supervise each other are no more unique to the marriage relationship than any other close relationship between co-workers either of a familial nature or not. Supervisory concerns can be handled by transfer, potential interference in hiring can be handled by company rule, and grievances or labor disputes as usual, are handled under the rule of contract, not by employees taking sides with each other.

No spouse rules per se produce more harm than good. They effectively preclude otherwise qualified female applicants from employment which is essential to the survival of the woman and her family at better than poverty levels. No spouse rules are more often than not based upon erroneous beliefs

concerning a less than serious attachment to the labor force by working wives and unproven superstition concerning the behavior of female spouses with male spouses in the workplace.

Employers who raise no-spouse rules as an employment obstacle to otherwise qualified female applicants should be required to do more than speculate or offer stereotypical thinking concerning wives and marital relationships. Employers should be required by courts to prove their hypothesis concerning wives and husbands working together. In the absence of proof, no-spouse rules should fall. Society can no longer afford the luxury of permitting management to erect barriers to working wives and subtly continue the concentration of women workers in low-paying jobs. No-spouse rules are a form of sex discrimination. As such, they should be subjected to a heightened standard of review. Only by

guidance from this Court will lower courts go beyond traditional notions and ideas when reviewing justifications for no-spouse rules.

Women's position in the national labor force is rapidly evolving into a major social issue. It is one that has reached constitutional dimension. The democratic process was unable to correct racial segregation without judicial intervention for the same reasons the economic plight of women will not be corrected by the marketplace alone. Women are a traditionally economically hindered group. They lack the means and resources to bring about the changes necessary through the democratic process.

The devaluation of the work done by women occurred as a result of how women were viewed throughout society. A change in society's view of women in the work place may be realized by our grandchildren, but not without direction from this Court. Neither employers nor the

marketplace have any incentive or motivation to modify pay scales or past practices to correct the economic injustices allocated to women in the labor force. The absence of constitutional guidance in this area leaves employers, workers, and courts alike, adrift in a crucial time of change within our labor force and society at large. It is essential these issues be addressed.

II. FEDERAL COURTS ARE IN NEED OF FURTHER CLARIFICATION OF THE STANDARDS TO BE APPLIED IN GENDER DISCRIMINATION CASES UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. SEC. 1983.

A.1 The Petition Should Be Granted Because Federal Courts Need Further Guidance As To When Gender Discrimination Rises To The Level of Heightened Scrutiny.

Under the present two-tier equal protection analysis, if a governmental classification trammels a fundamental personal right or is drawn upon inherently suspect distinctions such as race, religion, or lineage, it is subject

to strict scrutiny, and can be upheld only if it is necessary to promote compelling governmental interests and is narrowly drawn to express only such interests. Roe v. Wade, 410 U.S. 113, 155, 93 S. Ct. 705, 35 L. Ed.2d 147 (1973); Shapiro v. Thompson, 394 U.S. 618, 634, 89 S. Ct. 1322, 22 L. Ed.2d 600 (1969); Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed.2d 510 85 S. Ct. 1678 (1965); Loving v. Virginia, 388 U.S. 1, 18 L. Ed.2d 1010, 87 S. Ct. 1817 (1967).

Alternatively, if the rights involved are not considered fundamental or the classification does not burden an inherently suspect class, the classification is presumed valid so long as it is rationally related to furthering the stated government interest. Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 312, 49 L. Ed.2d 520, 96 S. Ct. 2562 (1976). U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166, 66 L. Ed. 368, 101 S. Ct. 453

(1980); New Orleans v. Dukes, 472 U.S. 297, 49 L. Ed. 2d 511, 96 S. Ct. 2513 (1976).

Strict adherence to this framework would invariably subject gender discrimination to the bottom tier of analysis, unless an additional fundamental right was involved. This Court, however, has recognized that while not an inherently suspect class, Frontiero v. Richardson, 411 U.S. 677, 36 L. Ed.2d 583, 93 S. Ct. 1764 (1973), classifications based upon gender, not unlike that based upon race, have traditionally been the touchstone for pervasive and often subtle discrimination. Caban v. Mohammed, 441 U.S. 380, 398, 60 L. Ed.2d 297, 99 S. Ct. 1760 (1979). This court has also recognized that women have historically been unfairly hindered by legislative attempts to exclude women from particular areas simply because legislators believed women less able than men to perform a

particular function. Mississippi University for Women v. Hogan, 458 U.S. 718, 725, 73 L.Ed.2d 1090, 102 S.Ct. 331 (1982). Thus, when government establishes a classification which has a disproportionately adverse effect on women, or which is overtly stated in male/female terms, a level of "heightened scrutiny" has been applied. Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 60 L. Ed. 870, 99 S. Ct. 2282 (1979), and Mississippi University for Women v. Hogan, 458 U.S. 718, 73 L. Ed.2d 1090, 102 S. Ct. 331 (1982). Under this standard, the government is required to do more than show a rational relationship between its stated purpose and the classification. Under "heightened scrutiny", the government must show the the classification serves "important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." Mississippi

University for Women v. Hogan, 458 U.S. 718, 724, 73 L. Ed.2d 1090, 102 S. Ct. 331 (1982), citing Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142, 150, 64 L. Ed.2d 107, 100 S. Ct. 1540 (1980), and Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 60 L. Ed. 870, 99 S. Ct. 2282 (1979).

The existence of this middle tier of scrutiny is abstractly straightforward, but it is often difficult for courts and citizens to perceive which rights under what circumstances will trigger what level of scrutiny.

As in Personnel Administrator of Massachusetts, a court must first decide if the classification is truly neutral or if it overtly or covertly is based upon gender. Because gender discrimination is subtle, a classification can on its face appear neutral, but be so riddled with exceptions and distinctions that as applied, it constitutes covert gender discrimination. If a court determines

such a classification to be truly neutral, it must then determine if the adverse effect is purposeful gender discrimination. In Personnel Administrator of Massachusetts, the Court found that Helen Feeney was disadvantaged by the Massachusetts veteran preference system, but held that the statute distinction between veterans and non-veterans was not purposeful sex discrimination. The District Court twice declared the Massachusetts statutory in this case unconstitutional prior to this Court's final determination. In Mississippi University for Women, the District Court held constitutional Mississippi's single sex university admission but was revered by the Appellate Court. The matter was resolved by this Court in 1982, holding Mississippi's admission policy to be unconstitutional. The Federal District and Appellate Courts, as evidenced by these two recent cases, are far from

settled in their approach to gender discrimination and in how to define its parameters. These two cases are relatively uncomplicated compared to the case now before this Court by virtue of this Petition. Debra Heyden not only raised gender discrimination concerning classification as applied, but gender discrimination based upon her marital status which interfered with her fundamental right to marry.

In Zablocki v. Redhail, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed.2d 618 (1978), this Court affirmed the District Court of the Eastern District of Wisconsin's determination that there exists a constitutionally protected right to marry which occupies the status of being a fundamental right. The Zablocki Court struck down the Wisconsin statute which withheld permission to marry if a party was unable to show compliance with a prior child support obligation. In Boddie v. Connecticut, 401 U.S. 37, 91 S.

Ct. 780, 28 L. Ed.2d 113 (1971), the requirement of a filing fee from indigent parties in order to obtain a divorce was found to unreasonably interfere with a citizen's right to not be married. In Loving v. Virginia, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed.2d 1010 (1967), the State of Virginia's miscegenation statutes were held to violate a citizen's right to select whom they would marry. In Loving, other fundamental rights were also involved because the statute further affected a traditionally disadvantaged group, black Americans. In Califano v. Jobst, 434 U.S. 47, 54 L. Ed.2d 228, 98 S. Ct. 95 (1977), a Congressional determination to terminate Social Security benefits upon the recipients' marriage was upheld. The Califano Court conceded that the Congressional rule did burden John Jobst, but found the rule a rational means of administering a complex statutory scheme. The Califano Court further noted that unlike the situation

presented in Loving, the Congressional rule "could not be criticized as merely an unthinking response to stereotyped generalizations about a traditionally disadvantaged group." Califano v. Jobst, 434 U.S. at 54. The implication of these decisions concerning the fundamental right to marry is that when governmental regulation of marriage negatively impacts a traditionallly disadvantaged group (i.e., indigents and racially identifiable groups) the government regulation will be reviewed with stricter scrutiny.

Debra Heyden is a woman. Women have historically been the victims of gender discrimination, and are a traditionally disadvantaged group. Women have been historically discriminated against in the labor market. Debra Heyden is no exception. Her chosen career was that of a law enforcement dispatcher. She worked as a dispatcher for the Pleasant Prairie Police Department before seeking to

improve her financial circumstances by applying for the dispatcher position with Kenosha City and County Joint Services. Debra Heyden was denied the Kenosha City and County Joint Services dispatching position for reasons other than lack of qualifications and like so many other women was barred from advancement in her chosen line of work. Debra Heyden was denied employment because she was a married woman, and therefore twice burdened, first as a woman and secondly because of her marital status.

Kenosha, Wisconsin, has a population of less than 90,000. It is a smaller community, with limited employment opportunity in the field of law enforcement dispatchers. Debra Heyden's ability to seek advancement in her chosen career was pitted directly against her right to be married or not married as she should choose. Had Debra Heyden lived with, been divorced from or engaged to Richard Heyden, there would

have been no obstacle to her employment with Kenosha City and County Joint Services. Ms. Heyden's choices were narrow. She could have her career or her husband, but not both. To societies' benefit, she chose to keep her marriage intact, but in doing so submitted to the traditional forces which have combined to unfairly hinder women in the marketplace. Debra Heyden was fortunate to be able to recapture her position with the Pleasant Prairie Police Department but at a great loss of wages. (See App. Q)

Debra Heyden looks to this Court to recognize that in this instance more was at stake than the economic burden imposed in Califano v. Jobst upon John Jobst by his marriage. John Jobst was not additionally discriminated against because of his gender, as was Debra Heyden. John Jobst was not barred from advancement in his chosen profession and was not a member of a group that has been systematically relegated to the lowest

levels of employment in the national labor force.

Debra Heyden looks to this Court to recognize that unlike Personnel Administrator of Massachusetts, the regulation herein challenged was not mutual and was applied in a discriminatory manner, and violated her fundamental right to marry.

Debra Heyden's challenges are multi-faceted and raise a number of discriminatory acts for scrutiny by this Court. Her questions cannot easily be answered by existing case law. The distinctions between the rational relationship analysis and the heightened scrutiny analysis, are not always clear in gender discrimination cases as indicated by the lower court decisions in Personnel Administrator of Massachusetts and Mississippi University for Women. It becomes even less clear when the rights involved are a mixture of economic, gender, and fundamental, touching on all

three levels of scrutiny. Therefore this Court should accept this Petition, clarify the standards which must be applied in cases of this nature and accord Debra Heyden's challenges the level of heightened scrutiny to which they were entitled.

A.2 The Petition Should Be Granted Because The Kenosha City and County Joint Services' No-Spouse Rule Was Invidious Gender Discrimination As Designed And Applied, Failing Any Conceivable Test of Rationality.

The Kenosha City and County Joint Services' no-spouse rule in its very inception was intended to apply only to women.

"The policy was set by the Board that a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher and that the TWO WIVES who were the subject of the discrimination would be offered a position in the Records Department." (Emphasis supplied.) (See App. D)

This rule was conceived, drafted, introduced, and recommended to the Kenosha City and County Joint Services Board by Roger Schoenfeld, interim Director of Joint Services. Director Schoenfeld's stated purpose was to stamp out nepotism in his department (See App. Q), beginning with the wives of law enforcement officers. Director Schoenfeld apparently did not even consider that an anti-spouse rule should include husbands as well as wives if it was to be applied evenhandedly and without discrimination. At the time this rule was conceived and adopted, Kip Keckler, a male dispatcher for Joint Services, was married to a City of Kenosha firefighter, and was not required to terminate his employment, as were the two wives. (See App. G, H, and I)

Ms. Heyden inquired of Director Schoenfeld why Kip Keckler could continue dispatcher duties when his wife was employed by the fire department, yet she

would not be permitted to undertake dispatcher duties while her husband was employed by the Sheriff's Department. Schoenfeld advised Ms. Heyden that Keckler was "grandfathered in". (See App. Q) Mr. Keckler's "grandfather" status evolved into the "firefighter" distinction before the District Court and the Court of Appeals. A distinction which should not have survived the rational relationship test applied by the lower courts and most certainly would not survive the heightened scrutiny review to which it was entitled.

In Vance v. Bradley, 440 U.S. 93, 59 L. Ed.2d 171, 99 S. Ct. 939 (1979), a case involving economic deprivation based upon age discrimination, this Court held in applying the rational relationship analysis, that a Federal Court is not allowed to resolve evidentiary conflicts against the legislative classification on the basis that without convincing

statistics, the legislative classification constitutes nothing more than pure speculation. The government is therefore entitled to make "logical" assumptions which the challenging party must convince the Court could not reasonably be conceived to be true.

Even under the Vance standard, the rule in the present case cannot stand. It is so riddled with exception and distinction, that the rule in and of itself is irrationally directed toward women. The Kenosha City and County Joint Services' no-spouse rule first singles out Kenosha City and County Joint Services employees from other Kenosha County employees, because Kenosha County has no anti-nepotism rule and no other Kenosha County department has a no-spouse rule. The rule then singles out the class of dispatchers from other Joint Services employees. The rule thirdly distinguishes married dispatchers from unmarried dispatchers. The rule then

distinguishes dispatchers who have law enforcement spouses from dispatchers who have firefighter spouses. After the distinction dust has settled, the population over which this rule is directed is quite narrow and limited. In fact, the population governed by this rule is, just as stated by the Kenosha City and County Joint Services Board in adapting the rule, the two wives. (See App. D) In order to sustain this rule, it must be accepted that there is a logical distinction to be made between married and unmarried dispatchers as well as a logical distinction between wives of law enforcement officers and the husband of a firefighter. Lastly, the assumption that husbands and wives working in close proximity is detrimental must also be logical. There is no logical basis for these distinctions.

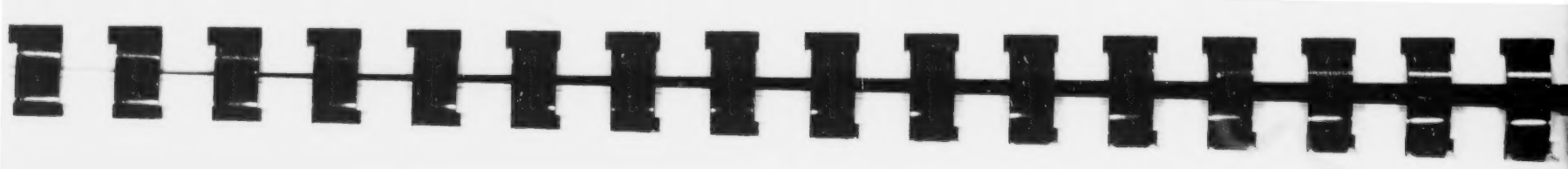
A dispatcher must respond with the same level head and degree of sobriety to a fire call as to a law enforcement

call. If the generalized fear of the Joint Services Board is that dispatchers will be unable to keep a level head when dispatching involves their spouses, then it is irrelevant whether a dispatcher is married to a law enforcement officer or firefighter. Male or female, the dispatchers' emotional responses to calls involving their spouses would be the same.

The exclusion of Mr. Keckler from the rule undercuts the alleged public safety purpose of the rule because his wife's occupation is as dangerous as any law enforcement officer's and his emotional responses to her being in danger would be no different than those of Debra Heyden. The fact that there have been no difficulties surrounding Mr. Keckler dispatching his firefighter wife is in and of itself evidence that spouses dispatching spouses into potentially dangerous situations has not been a problem. Further, Mr. Keckler's

exclusion from the rule exposes it as applied to be the intentional gender based discrimination that it is when coupled with Director Schoenfeld's avowed purpose to stamp out nepotism and begin with wives.

Debra Heyden's case is not concerned solely with economic deprivation as in New Orleans v. Dukes, 472 U.S. 297, 49 L. Ed.2d 511, 96 S. Ct. 2513 (1976). Nor does her case involve age discrimination as in Massachusetts v. Board of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed.2d 520 (1976), and U.S. Railroad Retirement Board V. Fritz, 449 U.S. 166, 101 S. Ct. 453, 66 L. Ed.2d 368 (1980). Economic deprivation cases have always been accorded the lowest level of scrutiny, and this Court has not yet found age to be a suspect class or even a "quasi" suspect class; so age, too, has always been accorded the lowest level of scrutiny. Debra Heyden's case should not



be judged by the lowest level of scrutiny as accorded economic and age cases, but by that heightened level of scrutiny accorded to gender discrimination, especially when other fundamental rights and issues are involved.

Her denial of employment based upon her status as a married woman under a purportedly neutral rule, which barred wives but not husbands from the same position; the persistence of economic discrimination against women; and the impingement of her fundamental right to marry; combine to demand that she be permitted a full hearing on this matter and that it be reviewed under a standard of heightened scrutiny.

Upon full hearing and review under the heightened scrutiny standard as applied in Personnel Administrator of Massachusetts v. Feeney, supra, and Mississippi University for Women v. Hogan, supra, the Kenosha City and County Joint Services Board will be required to

show that their no-spouse rule bears a close and substantial relationship to important governmental objectives. Personnel Administrator of Massachusetts v. Feeney, 442 U.S. at 273. This test must "be applied free of fixed notions concerning the roles and abilities of males and females. Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions." Mississippi University for Women v. Hogan, 458 U.S. at 725. The rule must also be reviewed to determine if it is purposeful discrimination. Swann v. Charlotte Mecklenburg Bd. of Education, 402 U.S. 1, 16, 28 L.Ed.2d 554, 91 S.Ct. 1267 (1971).

In balancing the purpose and objectives of the Joint Services no-spouse rule, with its discriminatory design and application, the Court must consider the disadvantaged position of women in the labor force and the obstacle it presented to Debra Heyden, rendering

her unable to improve her economic position and remain married, as well as the particular facts surrounding this rule and its inception.

The Joint Services no-spouse rule postures itself as equally applicable to men and women. All three county units served by Joint Services and its dispatchers are 95% men. At the time this rule was adopted, Joint Services had 21 employees on all three shifts, 17 women and 4 men. (See App. M) In the absence of a major sociological revolution in Kenosha, Wisconsin, it will be well into the next century before the Joint Services no-spouse rule will in reality apply as equally to husbands as to wives. Kenosha County has no anti-nepotism policy. Prior to the creation of Joint Services as a county department in 1982, the Kenosha Police Department, Kenosha County Sheriff's Department, and Kenosha Fire Department used sworn officers for dispatch duties.

(See App. L) No public safety issues were raised or regulations adopted by any of those three departments regarding employees who were close family members providing dispatch duties to each other. Each of these three departments had then and has now examples of fathers/sons, brothers, and other close relatives working side by side. Joint Services and its governing board was created to provide civilian personnel to perform dispatch and records services in order to free up sworn personnel for duty. As part of the contract negotiations between the city and county, the Kenosha Police Department, Kenosha County Sheriff's Department, and Kenosha Fire Department were assured that the civilian personnel would have no supervisory functions over officers or firefighters. (See App. L)

With the birth of Joint Services as a governmental entity, Director Schoenfeld, seeking to eliminate nepotism in Kenosha County, conceived, drafted,

submitted, and recommended on 10/27/82 that the Joint Services Board adopt a no-spouse rule which would apply only to the wives of law enforcement officers. Because this case has not had full hearing, Director Schoenfeld's rationale for singling out wives has not been offered. It can, however, be inferred from the fact that he considered only wife dispatchers to be unable to maintain their professionalism and level of job performance when their husbands were involved in field work but felt that the husband dispatcher would be capable of continued stable performance and professionalism when his wife was involved with field work. Director Schoenfeld's intent was to remove the two wives from dispatcher duties, and this he did. Safety considerations in this context cannot justify treating men and women in the same job differently.

A heightened scrutiny review will also reveal that the alleged safety

considerations are based upon generalizations, speculation, and stereotypical thinking regarding the emotional stability of spouses, i.e. wives, in a working relationship where their husbands are involved. The lower courts, in applying a rational relationship analysis, accepted the Joint Services Board's assertion that wives acting as dispatchers for husbands could present dangerous accidents or mishaps. Sebetic v. Hagerty, 640 F.Supp. 1274 (E.D.Wis. 1986), and held that therefore the no-spouse rule was a permissible means to achieve that objective. The lower courts wholeheartedly accepted this assumption as reasonable. This is not a logical assumption especially when Mr. Keckler has continued to dispatch his firefighter wife without even one remote dangerous accident or mishap.

Although this record is incomplete because this action was prematurely terminated by summary judgment, the Joint

Services Board offered no evidence of actual incidences where close family members acting as dispatchers for other family members caused or nearly caused an accident or dangerous mishap prior to the creation of Joint Services. If there were no actual dangerous incidences where people with close family relationships operated as dispatcher and dispatchee, then the reasoning of the Joint Services Board must be based upon a peculiar quality or characteristic of the marriage relationship that sets that relationship apart from others. That factor as articulated by the District Court is, "the mix of feelings which typically attends the marriage relationship thus could cripple law enforcement response and decrease the level of safety in the community at large should a dispatcher become unable to function adequately to handle dispatching duties during such a crisis." Sebetic v. Hagerty, 640 F.Supp. 1274, 1275 (E.D.Wis. 1986). This theory

is without objective support and is simply a generalization about married people that cannot stand. Emotional instability may or may not exist in any given individual but certainly cannot be shown to emerge as a result of marriage. If a person does not function well in a crisis, that is a personal characteristic, not one that is acquired with their marriage license. For every instance when a person falls apart in a crisis, there is an equal and opposite instance where another person overcomes the crisis and rises to or above it. The ability to respond well in a crisis involving a loved one, is not a characteristic of unmarried people and husbands any more than the failure to respond well in a crisis involving a loved one is a characteristic of married people and wives.

Prior to the creation of Joint Services in 1982, fathers and sons,

brothers, and other close family members who were male provided dispatch duties in the Kenosha Police Department, Kenosha County Sheriff's Department, and Kenosha Fire Department, for each other. This was not a safety concern. In 1982, with the creation of Joint Services, wives performing dispatch duties involving law enforcement spouses became an alleged safety concern. The difference lies in the passage of the dispatch duties from males who were closely related to females who were wives. Wives as women, have been historically characterized to be more emotional, less levelheaded, less dependable, less serious about their employment, more family oriented, and certainly unable to handle any crisis without assistance from their husbands.

Debra Heyden was a dispatcher for the Pleasant Prairie Police Department while her husband was a Kenosha County Sheriff's Deputy. She was aware on many occasions, by virtue of her radio

communication, of her spouse being dispatched on potentially dangerous calls. Her job performance for the Pleasant Prairie Police Department was at all times exemplary. There is no reason to believe her job performance would not have continued to be exemplary for Kenosha County. Whether or not Debra Heyden would be able to function adequately in a crisis involving her spouse is best evaluated by her past job performance record, and personal qualifications. Spontaneous generalizations embodying negative beliefs about a woman's ability to handle a crisis, cannot replace objectivity.

The lower courts resolved disputed factual issues on summary judgment concerning a dispatcher's discretionary functions in favor of respondent, holding, in effect, any discretion exercised by a dispatcher where a spouse might be involved was supportive of public safety concerns. Sebetic v.

Hagerty, 640 F.Supp. at 1277. (See App. G through P) Regrettably, affidavits and formal job descriptions leave much to the imagination as to the actual day-to-day operations in a work setting. Neither do affidavits and job descriptions provide depth and understanding concerning the impact of discretionary functions between two governmental departments. Only testimony can resolve the subtleties between the written description and the actual impact and effect of workplace activities. Only by a full review under the appropriate heightened standard will Debra Heyden show the limited impact of a dispatcher's discretionary functions and the degree of independence between Joint Services dispatchers and the departments they serve.

CONCLUSION

For all the reasons before stated, Debra Heyden respectfully requests this Court to grant her petition for a Writ of Certiorari to the Court of Appeals for

the 7th Circuit, and in doing so provide guidance and direction to courts and litigants as to what mix of rights will find gender discrimination of this nature constitutionally invalid.

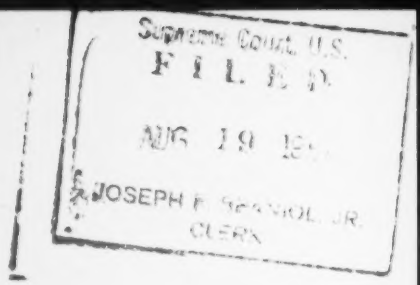
Respectfully submitted,

Walter W. Stern
Attorney for Petitioner

August 17, 1987

87-387

APPENDICES



In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. _____

* *

DEBRA HEYDEN,

Petitioner,

vs.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE, STANLEY
KERKMAN, EUGENE BILOTTI,
JAMES FONK, and
DONALD ANDREOLI,

Respondents.

* *

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

APPENDIX A

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

May 21, 1987.

Before

Hon. WILLIAM J. BAUER, Chief Judge

Hon. WALTER J. CUMMINGS,
Circuit Judge

Hon. FRANK H. EASTERBROOK
Circuit Judge

DEBRA HEYDEN,

Plaintiff-Appellant,

No. 86-2453 v.

ROGER SCHOENFELD, et al

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

Nos. 85 C 1493, 84 C 1605

Judge Myron L. Gordon

This cause was heard on the record from the United States District Court for the Eastern District of Wisconsin, Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED, with costs, in accordance with the order of this Court entered this date.

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

ARGUED FEBRUARY 23, 1987

May 21, 1987.

Before

Hon. William J. Bauer, Chief Judge

Hon. Walter J. Cummings,
Circuit Judge

Hon. Frank H. Easterbrook
Circuit Judge

DEBRA HEYDEN,

Plaintiff-Appellant,

No. 86-2453 vs.

ROGER SCHOENFELD, et al

Defendants-Appellees

Appeal from the United States District Court for the Eastern District of Wisconsin.

Nos. 85 C 1493, 84 C 1605

Judge Myron L. Gordon

O R D E R

The plaintiff-appellant, Debra Heyden, appeals the district court's order granting the defendants-appelles', Roger Schoenfeld, et al. motion for summary judgment. We affirm the order of the district court and hereby adopt its opinion in full. See Sebetic v. Hagerty, 640 F. Supp. 1274 (E.D. Wis. 1986).

Beverly M. SEBETIC and Donald J. Sebetic, Plaintiffs,

v.

Thomas P. HAGERTY, Paul Whiteside, Sr., Donald Andreoli, James Funk, Eugene Bilotti, John Bilotti, Gilbert Dosemagen, John Serpe, and Roger Schoenfeld, Defendants.

Debra HEYDEN, Plaintiff,

Roger SCHOENFELD, John D. Bilotti, John A. Serpe, Stanley Kerkman, Eugene Bilotti, James Funk, and Donald Andreoli, Defendants.

Nos. 84-C-1605, 85-C-1493

United States District Court, E.D. Wisconsin.

Aug. 12, 1986.

Wives of law enforcement officers brought action against members of joint services board for violation of equal protection and due process clauses and for conspiracy to deprive them of civil

rights arising out of policy which prohibited spouses of law enforcement officers from employment as dispatchers. One law enforcement officer filed derivative claim for relief alleging unjustified interference with marital relationship. Cross motions for summary judgment were filed. The District Court, Myron L. Gordon, Senior District Judge, held that: (1) policy served rational relationship to legitimate governmental purpose, was not pretext for gender discrimination, and, therefore, did not violate equal protection clause, and (2) policy did not interfere with right to marry and, therefore, did not violate due process clause.

Summary judgment granted in favor of members of joint services board.

1. Constitutional Law 238.5

Classifications created by policy of joint services board which prohibited spouse of law enforcement officer from employment as dispatcher, but which did

not adopt that policy for spouses of fire fighters, close family relatives, or record keepers served legitimate governmental interest in eliminating potential for serious injury and disruption in delivery of public services, was designed to reduce number of dangerous accidents that could result from dispatcher's spouse serving as law enforcement officer who needed to report to dangerous scene, and, therefore, bore rational relationship to legitimate end and complied with equal protection clause. U.S.C.A. Const.Amends. 5,14.

2. Constitution Law 224(3)

Policy of joint services board which prohibited spouse of law enforcement officer from employment as dispatcher, but which disproportionately affected women, was not pretext for gender discriminating and, therefore, complied with equal protection clause. U.S.C.A. Const.Amends. 5,14.

3. Constitutional Law 278.4(2)

Policy of joint services board which prohibited spouse of law enforcement officer from employment as dispatcher did not significantly interfere with right to marry, was reasonable public safety measure, and, therefore, did not violate due process by interference with exercise of fundamental right. U.S.CA. Const.Amends. 5, 14.

4. Conspiracy 7.5

Policy of joint services board which prohibited spouse of law enforcement officer from employment as dispatcher and which was not based on invidiously discriminatory animus did not violate section 1985 which prohibits conspiracy to violate constitutional rights. 42 U.S.C.A. § 1985

Walter W. Stern, Kenosha, Wis., for plaintiffs.

Frank Volpintesta, Kenosha County Corp. Counsel, Kenosha, Wis. Mary A. Moore, Milwaukee, Wis., for defendants.

Cite as 640 F.Supp. 1274 (E.D.Wis. 1986)

DECISION AND ORDER

MYRON L. GORDON, Senior District Judge.

These cases were brought pursuant to 42 U.S.C.§§ 1983 et seq. Because the plaintiffs' factual allegations raise identical legal issues, the cases have been consolidated for all purposes. See Local Rule § 4.03. The principal plaintiffs, Beverly Sebetic and Debra Heyden, assert due process, equal protection, and conspiracy claims against various members and officers of the board of directors of the Kenosha City and County Joint Services Board. Plaintiff Donald Sebetic asserts a derivative claim for relief alleging unjustified interference with his marital relationship to Beverly Sebetic and loss of household income. The parties have filed cross motions for summary judgment, pursuant to Rule 56, Federal Rules of Civil Procedure. The defendants' motion

will be granted, and the plaintiff's motion will be denied.

The facts necessary to resolve the pending motions are undisputed. The Kenosha City and County Joint Services Board is a quasi-governmental agency authorized by state statute. See Wis. Stat. § 66.508(7)(d), the Board is empowered "[t]o enact, amend and repeal rules and regulations, not inconsistent with law, . . . for the government, operation and maintenance of the safety building and the employes thereof." Kenosha police and sheriff's department dispatchers are Board employes who work out of the safety building. On October 27, 1982, the Board issued a written policy directive providing that "a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher" and that the wife rendered ineligible for employment as a dispatcher pursuant to this policy "would be offered a position in the Records Dept."

The job of dispatcher for Joint Services is described in the record as "public safety communications work . . .," linking public safety agency (fire, police, rescue and Sheriff) mobile units with central dispatch. See Exhibit "A" attached to Heyden affidavit, at p. 2. "Based upon information received from telephone, teletype and two-way radio transmissions, [dispatchers] are responsible for directing fire, patrol and rescue vehicles to specific areas to cover emergency situations, requests for assistance and calls for service." Id.

A Joint Services dispatcher performs a variety of tasks, including determining the need for action as it pertains to law enforcement emergencies; determining the need for the assignment of on-duty vehicles; aiding in the coordination of police efforts in the apprehension of law violators and in the handling of emergency situations by providing an essential communication and

information gathering device; and arranging for the safety of patrol officers when the security of the individual is in question. Id. Job qualifications include the ability to think and react quickly in emergency situations and the possession of an even temperament with the ability to remain cool and collected under stressful conditions. Id. at p.3.

There is no real dispute regarding the defendants' motivation and perceived justification for establishing the no-spouse policy. The Joint Services Board was concerned with the adverse effects that the marriage relationship could have on the ability of a dispatcher to exercise dispassionate judgment and reasoned discretion in the execution of his or her essential duties. Where the dispatcher's spouse is a law enforcement officer, it was feared, an emergency situation could give rise to a conflict of interest between the dispatcher's

ability to react quickly and efficiently and his or her concern for the welfare of his or her spouse. The mix of feelings which typically attends the marriage relationship thus could cripple law enforcement response and decrease the level of safety in the community at large should a dispatcher "become unable to function adequately to handle dispatching duties during such a crisis." See first Schoenfeld affidavit, at par. 12.

Debra Heyden applied to the Joint Services Board for a position as a dispatcher in September 1982, before the Board issued its no-spouse policy. The record indicates that Mrs. Heyden qualified for the job based on an interview and examination and was in a position to be hired when the no-spouse policy was issued. On November 26, 1982, Mrs. Heyden met with defendant Roger Schoenfeld, then the director of the Joint Services Board, who informed her that she would not be offered the job

because her husband was a deputy sheriff for Kenosha County. See also Exhibit "E" attached to plaintiffs' motion for summary judgment. Since July 1983, Mrs. Heyden has been employed in the Joint Services records department.

Beverly Sebetic was hired by the Board as a dispatcher in January 1983. Mrs. Sebetic was unmarried at the time; her maiden name was Beverly Pettis. On December 17, 1983, Beverly Pettis married Donald Sebetic, a Kenosha County deputy sheriff. On December 23, 1983, defendant Thomas Hagerty, then director of the Joint Services Board, issued a memorandum to "Ms. Beverly Pettis-Sebetic," informing her that her marriage was in conflict with the Board's no-spouse policy and advising that either she or her husband must resign by December 30, 1983. The memorandum also warned that unless one of them resigned by December 30, she would be terminated. Mrs. Sebetic was so terminated. Since August

27, 1984, Mrs. Sebetic has been employed by Joint Services as a records clerk.

The plaintiffs argue that the no-spouse policy creates an unreasonable classification in violation of the fourteenth amendment equal protection clause because it does not apply to the spouses of Kenosha firefighters, to close family relatives other than spouses, or to recordkeepers who also have close daily contact with law enforcement officers. They also argue that the disparate impact of the policy vis-a-vis females constitutes invidious, gender-based discrimination in violation of the equal protection clause. The plaintiffs contend that the policy could be obviated by assigning dispatchers with spouses in Kenosha law enforcement to dispatcher consoles which do not dispatch police or sheriff's department, personnel or by assigning such dispatchers to work shifts different from those worked by their police officer or sheriff's

department spouses. Plaintiffs also contend that the policy violates substantive due process "by interfering with marital relations and . . . with the economic affairs of a husband and wife without legitimate reasons or provable concerns . . . ." See plaintiff's motion for summary judgment at par. 5.

I. EQUAL PROTECTION

Generally, legislation or official governmental action challenged as denying equal protection of the laws "is presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate [governmental] interest." City of Cleburne, Tex v. Cleburne Living Center, ---- U.S. ----, 105 s. cT. 3249, 3254, 87 1.eD.2D 313 (1985). "In assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification." Personnel Administrator of Mass. v. Fenney, 442 U.S. 256, 272, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870 (1979).

[1] The classification drawn by the Joint Services Board in this case is well within the legislative prerogative. A blanket policy proscribing the spouses of Kenosha law enforcement officers from serving as dispatchers can be defended on several alternative, equally rational, grounds. The governmental entity in this case has a legitimate interest in eliminating the potential for serious injury, inefficiency, and disruption in the delivery of crucial public services. The Schoenfeld affidavits clearly illustrate that the no-spouse policy was designed to reduce the incidence of dangerous accidents and mishaps which can occur where the dispatcher's spouse is a police officer or sheriff's deputy. The policy thus bears a rational relation and is a rational means of serving the Board's legitimate end. See City of Cleburne, Tex., supra, 105 S.Ct. at 3255.

The plaintiffs' attempt to create a factual issue concerning the

sufficiency of the Board's justification for the no-spouse policy cannot be sustained. The Martin and Molette affidavits notwithstanding, plaintiffs' own Exhibit "A" contains objective documentary proof that the job of dispatcher involves discretionary duties and functions, the execution of which have a direct impact on the safety of police officers and sheriff's deputies in the filed. [sic] Viewed in this factual context, I find that the no-spouse policy reflects a valid legislative classification. See Personnel Administrator of Mass., supra, 442 U.S. at 273, 99 S.Ct. at 2293.

Plaintiffs argue that dispatchers could be assigned to different work shifts from their spouses or to dispatcher consoles which would not bring them into contact with their spouses. The Taran affidavit demonstrates that such an accommodation would be both practically and administratively unworkable.

The plaintiffs' other contentions under the fourteenth amendment equal protection clause are also without merit. The fact that the Board could or perhaps should have drawn the no-spouse policy more broadly to include Kenosha firefighters, other family relatives, or recordkeepers does not render the policy as drawn constitutionally impermissible. "[R]ational distinctions may be made with substantially less than mathematical exactitude." New Orleans v. Dukes, 427 U.S. 297, 303, 96 S.Ct. 2513, 2517, 49 L.Ed.2d 511 (1976). That the Board chose not to go further than it did does not mean that its legitimate objective of preventing avoidable mishaps in the delivery of law enforcement services is not "rationally furthered" by the choice made. See Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 3907, 316, 96 S.Ct. 2562, 2568, 49 L.Ed.2d 520 (1976); see also U.S. Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 179, 1010

S.Ct. 453, 461, 66 L.Ed.2d 368 (1980), holding that "the fact the line might have been drawn differently at some points is a matter for legislative, not judicial, consideration."

[2] Finally, the plaintiffs have submitted no evidence from which it may reasonably be inferred that the Board's no-spouse policy, neutral on its face is a pretext for gender discrimination against them as women. The fact that the Joint Services dispatcher's office is comprised largely of female employees does not by itself show that gender-based discrimination "entered into the establishment or formulation of the [no-spouse policy]." Personnel Administrator of Mass. supra, 442 U.S. at 273, 99 S.Ct. at 2293. Indeed, the Schoenfeld affidavits suggest that the impact of the policy on Mrs. Sebetic and Mrs. Heyden was not the result of gender-based discrimination, but of wholly gender-neutral considerations and

the implementation of a valid public-safety measure. I this conclude that no "intent to exclude women from significant public jobs was . . . at work in this [case]." Id. at 277, 99 S.Ct. at 2295; see also Frock v. United States R.R. Retirement Bd., 685 F.2d 1041, 1047-49 (7th Cir. 1982), cert. denied, 459 U.S. 1201, 103 S.Ct. 1185, 75 L.Ed.2d 432 (1983).

II. DUE PROCESS

[3] The plaintiffs' due process challenge proceeds from the premise that the Board's no-spouse policy impermissibly interferes with the exercise of the fundamental right to marry, thus depriving them of "'one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.'" See Zablocki v. Redhail, 434 U.S. 374, 385, 98 S.Ct. 673, 680, 54 L.Ed.2d 681 (1978), quoting Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-40, 94 S.Ct. 791, 796, 39

L.Ed.2d 52 (1974). This challenge cannot be sustained.

"[R]easonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed." Zablocki, supra, 534 U.S. at 386, 98 S.Ct. at 681. Viewing the facts of record in the light most favorable to the plaintiffs, it cannot be said that the Board's no-spouse policy significantly interferes with the right to marry. The policy is a reasonable public-safety measure with minimal residual impact on the decision to marry; indeed, the policy did not deter the plaintiffs themselves from getting married. Accord Califano v. Jobst, 434 U.S. 47, 48-49, 98 S.Ct. 95, 96097, 54 L.Ed.2s 228 (1977); see also Zablocki, supra, 434 U.S. at 387, n. 12, 98 S.Ct at 681, n. 12.

This is not a case, like Zablocki, where the challenged provision seriously

intrudes into "freedom of choice in an area" of fundamental freedom. 434 U.S. at 387, 98 S.Ct. at 681. The Board has simply recognized that being married to a Kenosha law enforcement officer may interfere with a dispatcher's untrammeled ability to carry out his or her important duties, especially those requiring the exercise of some degree of discretion. An otherwise rational and valid legislative classification, such as that involved in this case, is not rendered invalid "because some persons who might otherwise have married were deterred by the [challenged provision] or because some who did marry were burdened thereby." Califano, supra, 434 U.S. at 54, 98 S.Ct. at 99.

III. CONSPIRACY

[4] Although the plaintiffs' complaints each contain allegations that the named defendants engaged in a conspiracy to violate their constitutional rights, their summary judgment

motion and supporting papers do not raise or pursue the claim further. Be that as it may, to sustain a conspiracy claim under 42 U.S.C. § 1985, the plaintiffs must show "' . . . some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'" Kush v. Rutledge, 460 U.S. 719, 726, 103 S.Ct. 1483, 1487, 75 L.Ed.2d 413 (1983), quoting Griffin v. Breckenridge, 403 U.S. 88, 192, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971). I have already determined that the Board's no-spouse policy does not offend the fourteenth amendment equal protection clause by establishing an unreasonable classification or discriminating on the basis of sex. I conclude that the defendants were not motivated by a class-based, invidiously discriminatory animus and did not engage in a conspiracy to violate the plaintiffs' constitutional rights.

IV. DERIVATIVE CLAIM

Summary judgment dismissing plaintiff Donald Sebetic's derivative claim will be granted on the same grounds as the court has disposed of plaintiff Beverly Sebetic's claims.

CONCLUSION

Therefore, IT IS ORDERED that the defendant's motion for summary judgment be and hereby is granted.

IT IS ALSO ORDERED that the plaintiffs' motion for summary judgment be and hereby is denied.

IT IS FURTHER ORDERED that the plaintiffs' complaints be and hereby are dismissed on their merits, with costs.

APPENDIX C

Constitutional and Statutory Provisions

Constitution of the United States of America

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime,

unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process oflaw; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.S. Sec. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

42 U.S.C.S. ¶ 1985

(3) Depriving persons of rights or privilages [sic]. If two or more persons in any state or territory conspire, or go in disguise on the highway on on the premises of another, for the purpose of depriving, either directly or indirectly,

any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injury any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby

another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. ¶ 1980.)

APPENDIX D

Kenosha City & County

Joint Service Board

Meeting Date: October 27, 1982

The policy was set by the Board that a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher and that the two wives who were the subject of the discussion would be offered a position in the Records Dept.

APPENDIX E

Table 17

Women in the Labor Force

Selected Years, U.S.

(In Thousands)

Year	Women In Labor Force	Women in Labor Force as a percent of: Total Labor Force	Women in Labor Force as a percent of: All Women of Working Age
1900	4,999	18.1	20.0
1945	19,304	29.2	35.8
1950	18,412	28.8	33.9
1960	23,272	32.3	37.8
1970	31,560	36.7	43.4
1979	43,094	41.2	50.8

Source: Women in the Labor Force: New Data Series, Bureau of Labor Statistics, Janet Norwood and Elizabeth Woldman.

APPENDIX F

20 FACTS ON WOMEN WORKERS

U.S. Department of Labor
Office of the Secretary
Women's Bureau
1980

1. A majority of women work because of economic need. Nearly two-thirds of all women in the labor force in 1979 were single, widowed, divorced, or separated, or had husbands whose earnings were less that $10,000 (in 1978).
2. About 43 million women were in the labor force in 1979; they constituted more than two-fifths of all workers.
3. Sixty percent of all women 18 to 64--the usual working ages--were workers in 1979, compared with 88 percent of men. Fifty-one percent of all women 16 and over were workers. Labor force

participation was highest among women 20 to 24.

4. The median age of women workers is 34 years.

5. Fifty-three percent of all black women were in the labor force in 1979 (5.0 million); they accounted for nearly half of all black workers.

6. Forty-seven percent of Spanish-origin women were in the labor force in March 1979 (2.0) million); they accounted for 39 percent of all Spanish-origin workers.

7. Women accounted for nearly three-fifths of the increase in the civilian labor force in the last decade--about 13 million women compared with more than 9 million men.

8. More than one-fourth of all women workers held part-time jobs in 1979.

9. In 1977 the average woman could expect to spend 27.6 years of her life in the work force, compared with 38.3 years for men.

10. The more education a woman has the greater the likelihood she will seek paid employment. Among women with 4 or more years of college, about 2 out of 3 were in the labor force in 1979.

11. The average woman worker is as well educated as the average man worker; both have completed a median of 12.6 years of schooling.

12. The number of working mothers has increased more than tenfold since the period immediately preceding World War II, while the number of working women more than tripled. Fifty-five percent of all mothers with children under 18 years (16.6 million) were in the labor force in 1979; 45 percent of mothers with preschool children were working.

13. The 6.0 million working mothers 1/ with preschool children in 1979 had 7.2 million children under age 6, compared with 5.1 million working mothers with 6.1 million children under 6 years of age in 1974.

14. The unemployment rate was lowest for adult white men (20 and over) and highest for young black women (16 to 19) in 1979:

Adults	Percent	Teenagers	Percent
White men	3.6	White men	13.9
White women	4.6	White women	13.9
Hispanic men	5.7	Hispanic men	17.4
Hispanic women	8.9	Hispanic women	21.3
Black men	9.1	Black men	34.0
Black women	10.8	Black women	39.2

15. Women workers are concentrated in low paying dead end jobs. As a result, the average woman worker earns only about three-fifths of what a man does, even when both

work full time year round. The median wage or salary income of year-round full-time workers in 1978 was lowest for minority-race 2/ women--$8,996. For white women it was $9,578, minority men, $12,885; and white men, $16,194. The median earnings of full-time year-round women farm workers were $2,360; private household workers, $2,830; sales workers, $7,644; and clerical workers, $9,158.

16. Fully employed women high school graduated (with no college) had less income on the average than fully employed men who had not completed elementary school--$9,769 and $10,474, respectively, in 1978. Women with

4

1/ Includes never married mothers.

2/ "Minority races" refers to all races other than white. Blacks

constitute about 90 percent of persons other than white in the United States. Spanish-origin persons are generally included in the white population; about 93 percent of the Spanish-origin population is white.

years of college also had less income than men with only an 8th grade education--

$12,347 and $12,965, respectively.

17. Among all families, about 1 out of 7 was maintained by a woman in 1979 compared with about 1 out of 19 in 1969; 40 percent of black families were maintained by women. Of all women workers, about 1 out of 6 maintained a family; about 1 out of 4 black women workers maintained a family.

18. Among all poor families, half were maintained by women in 1979; about 3 out of 4 poor black families were maintained by women. In 1969 about one-third (35 percent) of

all poor families were maintained by women and 51 percent of poor minority 3/ families were maintained by women.

19. It is frequently the wife's earnings which raise a family out of poverty. In husband-wife families in 1979, 14.8 percent were poor when the wife did not work; 3.8 percent when she was in the labor force. Of all wives who worked in 1979, the median contribution was more than one-fourth of the total family income. Among those who worked year round full time, it was nearly two fifths. Among black families, the median contribution of working wives was one-thrid of the total family income.

20. Women were 80 percent of all clerical workers in 1979 but only 6 percent of all craft workers (women were about 3 percent of all

apprentices as of December 1978); 62 percent of service workers but only 43 percent of a professional and technical workers; and 63 percent of retail sales workers but only 25 percent of nonfarm managers and administrators.

3/ Data on black families are not available for 1969.

Source: U.S. Department of Commerce, Bureau of the Census; U.S. Department of Health and Human Services (formerly Department of Health, Education, and Welfare), National Center for Social Statistics; U.S. Department of Labor, Bureau of Labor Statistics and Employment and Training Administration.

December 1980

APPENDIX G

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE,
STANLEY KERKMAN,
EUGENE BILOTTI,
JAMES FUNK, and
DONALD ANDREOLI,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 652-2150

DAWN MOLETTE, being first duly sworn upon oath deposes and says:

1. That she is an adult resident of the State of Wisconsin and has been employed as a dispatcher/complaint taker since November 29, 1982, through the present.

2. That as a dispatcher/complaint taker your affiant is thoroughly knowledgeable concerning the day to day operation and the mechanisms involved in dispatching cars or fire trucks for City of Kenosha Fire Department, City of Kenosha Police Officers, Kenosha County Deputies, and County Fire Departments.

3. That your affiant has reviewed the affidavit of Deborah J. Taran, who has been communication manager only since May 14, 1984; the affidavit of Roger J. Schoenfeld who was interim director of Joint Services from April 1982, until April 1983; and the affidavit of Raymond W. Gram, who is now the director of

Kenosha City and County Joint Services since September, 1984.

4. That as a dispatcher/complaint taker I was never informed of a no-spouse rule, as it applied to the City of Kenosha Police Department and as it applied to the Kenosha Sheriff's Department.

5. That as a matter of fact sometime in 1983, I heard that Beverly M. Sebetic was terminated for the sole reason that her husband was a deputy sheriff, and I was surprised that that would be a significant reason to terminate a dispatcher/ complaint taker.

6. That there are six consoles in the dispatching room and one take over console. That each console is separate and each console can solely relate to the dispatching of city fire; City of Kenosha Police Officers; Kenosha Sheriff Deputies; and county fire.

7. That it is alleged in paragraph 4 by Deborah J. Taran that there is no discretion when dispatchers dispatch fire calls, because the calls are assigned by "units and equipment", but law enforcement calls are "assigned on an individual police officer or sheriff deputy basis." That in the day to day workings of the job of dispatcher/complaint taker, I have found that to be false. In fact a dispatcher has discretion in dispatching fire calls, for example when a supervisor of a fire requests another engine or two, I have the right to decide what engine and sometimes where the engine will be dispatched from, in terms of the location of the engine to the fire. I also have a choice from the three rescue squads in the city as to the rescue squad which I desire to dispatch to the scene of the fire, although the closest rescue squad geographically based upon the fire department map usually governs. The

geographical map prepared by the fire department and the rules for dispatch prepared by the fire department govern, just as the rules and regulations of the city police department and the map prepared by the city police department applies in dispatching police officers. Kenosha County also has a map prepared by the sheriff's department and rules and regulations for dispatch. As a dispatcher I apply these rules and regulations just as I do in dispatching fire. In each of the municipalities, the City and County of Kenosha, the geographical rule applies in terms of the initial assignment of a squad to an incident, and it has become a practice and procedure to follow the geographical rule in terms of any backup unit being dispatched.

8. There is essentially no differences between dispatching for city or county fires, city police agencies, or county police agencies, except for the

specific regulations by the various agencies.

9. That in my years of experience, as one of the original dispatcher/complaint takers the dispatcher does not supervise or manage a deputy sheriff for Kenosha County, a City of Kenosha Police Officer, or a firefighter for the City of Kenosha.

10. That as an example of where a dispatcher may have some discretion over firefighters in the City of Kenosha, I was working second shift as I usually do as a dispatcher in the winter of 1986, when there was a very serious fire at Bode Furniture in Kenosha, Wisconsin. I and other dispatchers had a list of all the firefighters and we had the discretion to call the firefighters up and ask they be made available to fight this serious fire. I had absolutely no supervisory function, but I did have some discretion. That had I been married to a firefighter, there may have been the same

risks and problems speculated about by Deborah J. Taran in her affidavit.

11. That one of the items that seriously undercuts the no-spouse rule is that dispatcher/complaint takers are monitored by each of the major agencies by a radio-intercom which further narrows my discretion, because the supervisors of the various agencies are in control of the individuals out in the field performing police or fire functions.

12. That each of the agencies has rules, practices, and maps describing the type of dispatching which must be done. That each agency follows the geographical rule as previously indicated, and each of the agencies takes an active role in defining the "do's and don't's " with respect to handling the people in the field performing police and fire functions. For example, the city and county police agencies assign squads to areas, and these squads are dispatched following the geographical rule. Because

of the rules, practices, maps, the attitude of co-workers, and the fact that dispatchers are not police or fire officers, the fears concerning a spouse of a police or fire official are not legitimate in my experience based upon the time that I have worked at the agency from November 29, 1982, through the present.

13. That as to the affidavit of Deborah J. Taran, paragraph 6(a) cannot be comprehended by me, even though I have been a dispatcher since November 29, 1982. That as to paragraph 6(b)(c)(d), as previously indicated based upon the geographical rules and the other practices, procedures, and maps of specific agencies a dispatcher simply would not have the inclination to discriminate against his or her spouse. Although the concerns expressed in paragraph 6 may be of a theoretical significance, my experience on the day to day job as a dispatcher would not bear

out these particular fears as being legitimate.

14. That paragraph 8 of the Taran affidavit may be correct, but I was taught not to even use the computer to dispatch vehicles to police or fire functions. Often times the computer has malfunctioned, so that a more accurate and sensible way to dispatch vehicles would be without using the computer. The rules, regulations, practices, and maps drawn by the different agencies in different jurisdictions is enough guidance to assist the dispatcher in dispatching vehicles.

15. That to my knowledge neither Kip Keckler or Sharon Martin, in any way have harmfully effected the fire department for the City of Kenosha, the citizens of the City of Kenosha, or the health and safety of their spouses who were employed as firefighters for the City of Kenosha. That because of the actual facts in the day to day operation

of a dispatcher contradict the theoretical concerns expressed in the affidavit of Deborah J. Taran, the reason for the distinction between spouses of firefighters and spouses of police officers is incomprehensible in light of the fact that machinery and engines carry people to fires.

Dated this 14th day of June, 1986, at Kenosha, Wisconsin.

/s/ Dawn Molette
Dawn Molette

Subscribed and Sworn to
before me this 14th day
of June, 1986.

/s/ Walter W. Stern
Notary Public
Kenosha County, WI
My Commission:

APPENDIX H

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE,
STANLEY KERKMAN,
EUGENE BILOTTI,
JAMES FUNK, and
DONALD ANDREOLI,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 652-2150

Gerri Martin, being first duly sworn upon oath deposes and says as follows:

1. That your affiant is employed by the Joint Services, for the City and Counties of Kenosha, which is separate and independent from the City of Kenosha and from Kenosha County.

2. That your affiant has been employed as a dispatcher/complaint taker since October 18, 1982.

3. That your affiant knows the plaintiffs in this action, Beverly Sebetic and Debra Heyden, and at one time worked as a dispatcher with Debra Heyden for Pleasant Prairie Police Department.

4. That your affiant was hired as a dispatcher/complaint taker very early in the history of Joint Services and during that period of time defendant Schoenfeld was acting as director.

5. That at no time in the job description or during the course of my employment was I informed that a marriage

to a Kenosha City Police Officer or Kenosha County Deputy Sheriff would result in termination or would result in any job action whatsoever.

6. That your affiant indicates that during the time that she has been a dispatcher/complaint taker, squads are assigned by geographical location, and the haphazard choice of the dispatcher. For example, the City of Kenosha Police Department has developed a map with zones, and the City Police Department determines who and how many police vehicles should be in each zone. The Kenosha Sheriff's Department also has a map with zones and the sheriff's department has determined that at least one squad should be present in each zone and sometimes two man squads west or east of I-94, in Kenosha County, Wisconsin. The decisions in terms of the geographical areas and the squads are up to the discretion of the respective

supervisors in the City and County of Kenosha.

7. That the fire department for the City of Kenosha also has a map that divides the city in particular geographical areas which would be serviced by the five firestations in the City of Kenosha. That the closest station geographically usually services a fire and I have learned that certain types of incidents require certain types of equipment. For example, a serious fire in the City of Kenosha requires two engines and one rescue, but the supervisor on duty for the fire department would then indicate that he or she needs more engines which would then be dispatched.

8. That in terms of assigning squads by geographical location, when there is an incident in Kenosha County, the area squad would be dispatched to do the job. The equipment is aided by a computer which would then pick the next

squad by geographical area if one was needed.

9. That during the time that I have been employed as a dispatcher/complaint taker there has been three shifts, a first shift (from 6:30 A.M. to 2:30 P.M.); a second shift (from 2:30 P.M. to 10:30 P.M.); and a third shift (from 10:30 P.M. to 6:30 A.M.).

10. That I know of my own personal knowledge that in 1982, there was shift flexibility, an employee could virtually pick a shift because it was in the beginning of our working in the new safety building in Kenosha, Wisconsin.

11. That your affiant has personal knowledge that from October, 1982, until sometime in late 1983 or 1984, Kip Keckler was working as a dispatcher/complaint taker and Kathy Keckler was a firefighter for the City of Kenosha. That Kip Keckler was not in any way disciplined because of his status of being married to a firefighter, Kathy

Keckler. That sometime in 1984 Sharon Martin, a dispatcher/complaint taker was hired by defendants to work third shift and her husband, Donald Martin, worked as a firefighter for the City of Kenosha at the same time. Not one defendant disciplined Sharon martin because of this arrangement.

12. That during the period of time that I have been employed as a dispatcher/complaint taker, this position has been dominated by females from the very beginning and still continues to be. At this time for example, on second shift there is one male supervisor named Kip Keckler and seven females. On third shift there are two males and four females. On first shift there are no males and seven females. That during the time that I have been employed by Joint Services out of 21 or 20 employees as dispatcher/complaint takers, the most men that have ever worked in that position at one time has been four.

13. This this affidavit is made in support of the plaintiffs' application for a motion for summary judgment and in opposition to the defendants' motion for summary judgment.

Dated this 20th day of May, 1986, at Kenosha, Wisconsin.

/s/ Gerri Martin

Subscribed and Sworn to
before me this 20th day
of May, 1986.

/s/ Beverly C. Jambois
Notary Public
Kenosha County, WI
My Commission: is permanent.

APPENDIX I

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

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ROGER SCHOENFELD, JOHN D. BILOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BILOTTI, JAMES FUNK, and DONALD ANDREOLI,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 652-2150

Kathy Keckler, being first duly sworn upon oath deposes and says as follows:

1. That your affiant resides in Kenosha, Wisconsin, and was formerly married to Kip Keckler.

2. That your affiant joined the City of Kenosha Fire Department in August, 1979. That at the time your affiant joined the City of Kenosha Fire Department Kip Keckler was working in dispatch for fire in the City of Kenosha.

3. That sometime in 1982, Kip Keckler was employed by Joint Services as a dispatcher/complaint taker dispatching city of Kenosha firefighters and police as well as deputy sheriffs for Kenosha County.

4. That during the above period we were married until our divorce in March, 1984, I was still employed as a firefighter for the City of Kenosha while Kip Keckler was employed by Joint Services.

5. That during the period of time between 1982 and March, 1984, to my knowledge Kip Keckler was not disciplined, suspended, or terminated because of his status of being married to me as a firefighter for the City of Kenosha.

6. That this affidavit is made in support of the motion of summary judgment filed by the plaintiffs and in opposition to the defendants' motion for summary judgment.

Dated this 15th day of May, 1986, at Kenosha, Wisconsin.

/s/ Kathy Keckler
Kathy Keckler

Subscribed and Sworn to
before me this 15th day
of May, 1986.

/s/ Walter W. Stern
Notary Public
Kenosha County, WI
My Commission:

APPENDIX J

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT

Civil Action
No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE,
STANLEY KERKMAN,
EUGENE BILOTTI,
JAMES FUNK, and
DONALD ANDREOLI,

Defendants.

AFFIDAVIT

Civil Action
No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

Richard Heyden, being first duly sworn upon oath, deposes and says:

1. That your affiant is the husband of Debra Heyden, the plaintiff in this action.

2. That your affiant has been and continues to be a deputy sheriff for Kenosha County for a period of approximately seven years.

3. That your affiant was present with Debra Heyden during September, 1982, through February, 1983, and directly experienced the effect of the termination upon her.

4. That in late September, 1982, I was informed that my wife was hired to be a dispatcher/complaint taker for Joint Services and was already in the process of getting her uniform fitted. That I recall that she had to send in some type of form within 5 days to accept her position or a form related to a uniform fitting, but whatever the form was, she

sent it in and was very happy to accept the position.

5. That on or about November 26, 1982, I went with my wife to discuss her termination with defendant Schoenfeld.

6. That one of the items that made my wife very upset and distraught from late September until November, 1982, was the fact that no one would tell her why she could not come to work and why she was terminated. She started to blame herself, as if she was at fault in some way for causing her termination or refusal to hire.

7. That the meeting between defendant Schoenfeld, myself, and my wife, occurred in his office at the Safety Building, Kenosha, Wisconsin, where he was acting director of Joint Services.

8. At the meeting I did not take a dominate role in the discussion, however, I did ask Mr. Schoenfeld why he

indicated that a husband/wife policy prevented employment, when Kip Keckler was a dispatcher and Kathy Keckler, his wife, a firefighter, could work under that arrangement because it seemed so unfair and discriminatory. Schoenfeld tersely said that Kip and Kathy Keckler were "grandfathered in." Schoenfeld said that there was no antinepotism policy in Joint Services but he wanted to pursue that policy. He said that it was only his personal feeling that there should not be a spousal relationship involving the dispatchers and a deputy or a police officer. When I brought up the issue of putting the people on different shifts to avoid even an appearance of a problem, he said no he wanted to eliminate the problem all together. When I asked him what problem he was referring to, he would not give me a specific example except to say that a dispatcher and his spouse might be hesitant or a dispatcher

with a spouse that was hurt or killed may not be able to function. Debra Heyden indicated that her job performance was excellent with the Pleasant Prairie Police Department (Municipal Building); that she is a certified dispatcher; and her record gave her all the skills needed to do a very good job. Mr. Schoenfeld indicated that her job status was not a question of her qualifications but it was simply a question that "nepotism" was not going to exist.

9. On February 22, 1983, still frustrated, myself and my wife went to see Gilbert Dosemagen, the then County Executive for Kenosha County. I explained the policy situation briefly and talked about the nepotism ruling. The County Executive indicated that there was antinepotism policy for the City but not for the County and that he would "correct the situation" and talk to Schoenfeld. Approximately 5 days later

we received a letter from Gilbert Dosemagen indicating, in effect, that he could not do anything about the matter.

10. That no attempt was made on the part of Schoenfeld or any other agents of Joint Services to place Debra Heyden on another shift or to place her on a console which would not be connected to Kenosha Sheriff's Department. There are three consoles and one complaint station, one for the fire, one for the City Police, and one for the Sheriff's Department. There was nothing done to ease the harshness of this rule with an extremely qualified person, so this entire chain of events affected my wife emotionally, affected her competence on her job when she went back to Pleasant Prairie Police Department, and affected her personality.

11. This affidavit is in support of the affidavit in opposition of summary judgment and the motion for summary judgment filed by both plaintiffs.

Dated this 15 day of May, 1986, at Kenosha, Wisconsin.

/s/Richard Heyden
Richard Heyden

Subscribed and Sworn
to before me this 15
day of May, 1986

/s/Walter W. Stern
Notary Public,
Kenosha County, WI
My Commission:

APPENDIX K

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND AND IN OPPOSITION TO SUMMARY JUDGMENT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE,
STANLEY KERKMAN,
EUGENE BILOTTI,
JAMES FUNK, and
DONALD ANDREOLI,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 642-2150

Beverly M. Sebetic, being first duly sworn upon oath deposes and says:

1. That your affiant is the plaintiff in the above entitled action and resides at 1863 - 19th Avenue, Kenosha, WI 53140.

2. That your affiant is a female and was employed as a dispatcher/ complaint taker for the KenoshaCity and County Joint Services on or about January 1, 1983.

3. That at the time your affiant was employed as a dispatcher/complaint taker your affiant was single and your affiant's maiden name was Pettis.

4. That on or about December 17, 1983, your affiant was married to Donald J. Sebetic, a deputy sheriff for the Kenosha Sheriff's Department, and such marriage took place while your affiant was on vacation and prior to her eventual termination from the Kenosha City and County Joint Services.

5. That on or about May 8, 1983, prior to said marriage your affiant had successfully completed her probationary period at all times pertinent.

6. That while your affiant was single, she continued to be employed by the Kenosha City and County Joint Services, which is an entity organized and existing in the State of Wisconsin and a separate and distinct entity from either the Municipal Corporation referred to as the City of Kenosha or the Municipal Corporation referred to as Kenosha County.

7. That during your affiant's employment, supervisors would indicate to your affiant that the employment arrangement was separate and distinct from either the City or County of Kenosha, and your affiant was under the control, supervision, and direction from superiors for the Joint Services, not agents, officers, or employees of the City of Kenosha or Kenosha County.

8. That on or about October 27, 1982, the Joint Services Board, as the representative of the defendant's herein, established a policy which read as follows:

> "The policy was set by the board that a husband or a wife of a sheriff's deputy or police officer will not be hired as a dispatcher and that the two wives who were the subject of the discussion would be offered the position in the Records Department."

That said policy is marked as Exhibit "A" and is attached to this affidavit and incorporated herein by reference.

9. After your affiant's marriage to Deputy Sheriff Donald J. Sebetic, your affiant received a memorandum from defendant Thomas P. Hagerty, Director of the Kenosha City and County Joint Services, such Exhibit is marked Exhibit "B" and is incorporated into this affidavit by reference hereto.

10. That the directive indicated, not that there was a conflict of interest, but there was a potential for

such conflict and permitted me the option to have my husband resign his position or resign my position.

11. That your affiant chose not to resign or have her husband resign, because Kenosha City and County Joint Services has no control whatsoever over the activities of deputy sheriffs for Kenosha County.

12. That, after your affiant refused to resign, her employment was terminated by defendant Thomas P. Hagerty effective December 30, 1983.

13. That during the course of employment, your affiant learned that there are six consoles for the dispatcher/complaint taker, three of which were used. One console was used exclusively for city fire dispatching in the City of Kenosha; one was used for dispatching of Kenosha County Deputy Sheriffs; and one console was used for dispatching of City of Kenosha Police Officers. There was also a separate

station for an individual to work in when taking complaints. That at no time pertinent, did defendant Thomas P. Hagerty, nor any of the defendants offer your affiant one of the consoles so that she would not even potentially dispatch her husband Donald J. Sebetic.

14. That during the course of my employment there were 14 females employed by Joint Services as dispatchers/ complaint takers and four males employed in the same position, and the only male who was in the same or similar position as your affiant Kip Keckler, was allowed to perform as a dispatcher while his wife, Kathy Keckler, continued as a firefighter.

15. That during all times pertinent there were three shifts for Joint Services Dispatchers/Complaint takers, and your affiant worked on the third shift. Your affiant's husband, Donald J. Sebetic, also worked on the third shift for Kenosha County. That at

no time pertinent hereto did defendant Thomas P. Hagerty or any other defendant offer an alternate shift differing from your affiant's husband's shift with the Kenosha Sheriff's Department.

16. That upon direct knowledge of your affiant, husband or wives of members of the City of Kenosha Fire Department are not part of the husband/wife exclusion policy so that after my termination, Sharon Martin, a dispatcher/complaint taker, who is married to Donald Martin, a firefighter for the City of Kenosha, in such status could result in Sharon Martin dispatching her husband to a City of Kenosha fire. During the course of the time that I was employed as a dispatcher/complaint taker, Kip Keckler, a dispatcher/complaint taker for Joint Services was married to Kathy Keckler also a firefighter, and had the risk of dispatching one of the trucks to a fire with his spouse as part of the crew. Such a distinction, in light of

the purpose of the regulation to prevent nepotism, is arbitrary, discriminatory, and unreasonable.

17. That the defendants' supposed concern for nepotism shows externally unequal and discriminatory enforcement in that for example: Darla Childers, a dispatcher/complaint taker, has a father who is a lieutenant with the City Fire Department; Debbie Koster, a dispatcher/complaint taker, has a brother, Ray Koster, who is a detective with the City of Kenosha Police Department; David Chase, a dispatcher/complaint taker, is the son of Lieutenant Robert Chase, a member of the City of Kenosha Police Department. That all of these examples indicate nepotism and yet neither of the dispatchers/complaint takers have been terminated, disciplined, or otherwise dealt with in accordance with the supposed purpose of the regulation of eliminating nepotism.

18. That internally the

defendants maintain a discriminatory and unreasonable policy of drawing distinctions between records clerks and dispatchers/complaint takers, both employees for the defendants herein. The records clerk deal with bonds and fines; take complaints and witness statements; handle warrants; answers questions from citizens; and take all accident reports. That these clerks have daily contact with both City Police Officers and Kenosha Deputy Sheriffs. That in this respect, Debra Heyden is the wife of a deputy sheriff, Richard Heyden. Laurie Dolnick is married to Mike Dolnick a member of the Kenosha Police Department and Laurie Dolnick's father is Jay Fuhrer, a detective for the City of Kenosha Police Department. That Carol Hafner was formerly married to Robert Hafner of the City of Kenosha Police Department. That no regulation or rule applies to the records clerks under any circumstances similar to the rule which resulted in my

termination on or about December 30, 1983.

20. That this affidavit for summary judgment and in opposition to summary judgment shall apply to also [sic] to the companion case involving plaintiff Debra Heyden. That each of the factual allegations herein indicate that the plaintiff is entitled to summary judgment pursuant to paragraph 17(a)(c).

21. That because of the change in lawyers, first William Nickolai, Kenosha County Assistant Corporation Counsel; then Frank Volpintesta, Kenosha County Corporation Counsel; and then representatives of the law firm of Mulcahy and Wherry, has crated numerous delays in the labor arbitration matter and in the equal rights matter, there is no adequate or reasonable remedy available under the law because of the adjournments caused and effectuated by defendants' counsel in the above matters.

Dated this 15th day of May, 1986, at Kenosha, Wisconsin.

/s/ Beverly M. Sebetic
Beverly M. Sebetic

Subscribed and Sworn to
before me this 15th day
of May , 1986.

Walter W. Stern
Notary Public
Kenosha County, WI
My Commission:

APPENDIX L

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT

Civil Action
No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD,
JOHN D. BILOTTI,
JOHN A. SERPE,
STANLEY KERKMAN,
EUGENE BILOTTI,
JAMES FUNK, and
DONALD ANDREOLI,

Defendants.

AFFIDAVIT

Civil Action
No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 642-2150

Walter W. Stern, being first duly sworn on oath, deposes and says:

1. That he is an attorney duly licensed to practice law in the State of Wisconsin and before the United States District Court for the Eastern District of Wisconsin.

2. That your affiant represents the plaintiff, Debra Heyden and the plaintiffs Donald and Beverly Sebetic in the above entitled civil action #85-C-1493 and 84-C-1605.

3. That also pending before the Department of Industry, Labor & Human Relations, Equal Rights Division, Case No. ERD #8452135 entitled Beverly M. Sebetic, Complainant, v. Kenosha City and County Joint Services, Respondent, the respondent signed a stipulation agreeing to certain facts relating to violations of Wisconsin Statutes concerning equal rights. The stipulation is marked Exhibit "A" and attached to the affidavit.

4. That the defendant Schoenfeld's affidavit is contradicted by the stipulation in every respect and attempts to mislead, and misrepresnet facts to the Court concerning the actual workings of the City of Kenosha, the County of Kenosha, and the separate entity known by the colloquial as the Joint Services. That particularly drawing the Court's attention to paragraph 8 the respondent admits as follows: "The Joint Services employees are not police officers, are not sworn personnel and are not supervisors of police officers for the City and County of Kenosha or City firefighters." The stipulation indicates that Beverly M. Sebetic, married to a deputy sheriff, Donald Sebetic, was hired by Kenosha City and County Joint Services on November 8, 1982, and was terminated pursuant to a so called husband/wife policy on December 30, 1983.

6.[sic] That contrary to the defend

ants' statement discrimination includes "spousal indentity" pursuant to Section 111.32(12) Wis. Stats. See attached decision marked Exhibit "B".

7.[sic] That your affiant represented the Kenosha Deputy Sheriff's Association in 1982 and 1983, and negotiated a labor contract for the Association for the years 1982, 1983, and 1984. That certain agents for the defendant's attorneys, Mulcahy & Wherry, represented Kenosha County in the negotiations. That one of the chief concerns of the deputy sheriffs was that dispatchers/complaint takers and records clerks would take over police functions and therefore invade the province of both the Kenosha Police Department and the Kenosha Sheriff's Department. That Kenosha County through its attorneys assured the Deputy Sheriff's Association as follows:

A. That the clerks and dispatcher/complaint takers would always

remain civil nonsworn personnel.

B. That said civilian personnel would in no instance have any supervisory control or management over the function of either the City of Kenosha Police Department or the Kenosha Sheriff's Department.

C. That the dispatchers, in particular, would in fact, assign squads by zones or geographic area, therefore eliminating much discretion in terms of any control over police personnel.

D. That supervisors within the City Police Department and Kenosha Sheriff's Department would have access to the dispatch and would have the ultimate decision in case a serious problem arose.

8.[sic] That among those individuals who assured the negotiating team of deputy sheriffs and your affiant of such independent civilian status was defendant Roger Schoenfeld, who was brought into a negotiating session held

in the spring of 1982.

Dated this 16th day of May, 1986, at Kenosha, Wisconsin.

/s/ Walter W. Stern
Walter W. Stern

Subscribed and Sworn to
before me this 16th day
of May , 1986.

/s/ Michelina C. Lucente
Notary Public
Kenosha County, WI
My Commission: 11/20/88.

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY LABOR
AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION

BEVERLY M. SEBETIC,

Complainant,

v.

KENOSHA CITY AND COUNTY
JOINT SERVICES,

Respondent.

STIPULATION

ERD Case
#8452135

IT IS HEREBY stipulated by and between the parties hereto, through their respective counsels, the following stipulation shall govern in deciding the above captioned matter concerning the issue of liability and damages:

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 652-2150

LIABILITY

1. The respondent is corrected to Kenosha City & County Joint Services Board.

2. The respondent, Kenosha City & County Joint Services Board, is an employer within the meaning of Section 111.31-111.395 of the Wis. Stats.

3. The complainant is female and married.

4. The complainant began her employment with the respondent on November 8, 1982, as a Records Clerk. On January 1, 1983, she became a Dispatcher.

5. The respondent terminated the complainant on December 30, 1983, pursuant to the policy of the Joint Services Board. The complainant was rehired on August 27, 1984, as a Records Clerk. The position of Records Clerk is not subject to the policy which originally caused her dismissal.

6. The complainant was sent a confidential memorandum on December 23,

1983, from Thomas P. Hagerty, Director of the Kenosha City & County Joint Services, subject: Board policy regarding Joint Services Dispatcher marriages:

> "Pursuant to and consistent with policy established by the Joint Services Board at the meeting of October 27, 1982 that 'a husband or wife of a Kenosha Sheriff's Department deputy or Kenosha Police Department officer will not be hired as a dispatcher. . . ' you are hereby notified that your recent marriage to Deputy Donald Sebetic is on conflict with this established policy. The Joint Services Board reaffirmed this policy at the meeting of December 21, 1983. Specifically, the potential for a conflict of interest is such that no Joint Services Dispatcher shall be permitted to remain in that function subsequent to marriage to a deputy or police officer. In the event that your husband may desire to and does resign his current position, no such conflict would exist.
>
> Therefore, I am advising you that a decision regarding the resignation of either you or your husband must be made in order to alleviate this potential conflict of interest. This decision must be made no later than Friday, December 30, 1983 at 4:00 p.m. You should advise me in writing of your decision. If

> no such communication is received at that time, I will take action to terminate you effective at 10:30 p.m. Friday, December 30, 1983.
>
> The Board directed me, however, to place you on a list for the next position available as a clerk in Records or Fleet Maintenance where no such conflict would exist. Should such a position become available, you will be so advised.
>
> Thank you for your time and attention in this matter."

7. The complainant states she is currently employed by the Kenosha City & County Joint Services Board as a Records Clerk which is lower paying than the Dispatcher job she was discharged from when she married her husband, a Deputy Sheriff.

8. A deputy sheriff for Kenosha County would be responsible to the Kenosha County Sheriff and the Sheriff's direct subordinates. A Dispatcher working for the Joint Services is responsible to the Board, in accordance with resolutions adopted by the Kenosha

County Board of Supervisors and the City of Kenosha Common Council. The Joint Services Board was established so that the City Police Department, City Fire Department and Kenosha Sheriff's Department could function more efficiently of providing more efficient police and fire protection to the citizens. The Joint Services employees are not police officers, are not sworn personnel and are not supervisors of the police officers for the City and County of Kenosha or City firefighters.

9. That the actual policy concerning hiring a Dispatcher who is married to a Deputy or Police Officer, is attached to this stipulation and marked Exhibit "A".

10. That at all time pertinent Donald Sebetic was a Deputy Sheriff for Kenosha County and the complainant married him on December 17, 1983. There is no question but that the cause of the complainant's termination was a violation

of the respondent's policy attached hereto and marked Exhibit "A".

Dated this 15th day of January, 1986, in Kenosha, Wisconsin.

/s/Beverly M. Sebetic	
Complainant	Respondent
/s/ Walter W. Stern	Frank Volpintesta
Attorney for Complainant	Attorney for Respondent

EXHIBIT "A"

ATTACHMENT #1

Meeting Date: October 27, 1982

The policy was set by the Board that a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher and that the two wives who were the subject of the discussion would be offered a position in the Records Dept.

STATE OF WISCONSIN DEPARTMENT OF INDUSTRY
LABOR and HUMAN
RELATIONS

INITIAL DETERMINATION LETTER

Date: April 1, 1985 EQUAL RIGHTS
DIVISION

Beverly M. Sebetic
1863 - 19th Avenue
Kenosha, WI 53140
Complainant

vs.

Kenosha City & County
Joint Services
1000 - 55th Street
Kenosha, WI 53140
Respondent

Please Reply to:

Madison Office
P.O. Box 8928
Madison, WI 53708
608-266-6860

Milwaukee Office
819 N. 6th Street
Milwaukee, WI
53203
414-224-4384

RE: ERD Case #8452135

Enclosed is a copy of the Initial Determination relative to the above complaint filed under the provisions of:

The Wisconsin Fair Employment Law; sec. 111.31 thru 111.395 of WIS. STATUTES.

The Wisconsin Open Housing Law; sec. 101.22 of WIS. STATUTES.

In which there is a finding that

There is NO PROBABLE CAUSE to believe the Respondent has engaged in discriminatory pratices. [sic] This finding is subject to appeal by the Complainant. To do so, the appeal must be in writing, state specifically the grounds for appeal, and be filed with (Received By) this Department WITHIN _____ days of the date of this letter. If not appealed within the time stated, the Complainant shall be deemed to have waived the right to a public hearing and this case (or this portion of this case) is automatically closed.

There is PROBABLE CAUSE to believe the Respondent has engaged in discriminatory practices. This Department is now charged with conciliation. A conciliator will contact you in the near future.

FOR A NOTE ABOUT THE CONCILIATION PROCESS SEE BACK

When both, PROBABLE CAUSE and NO PROBABLE CAUSE: are found and the NO PROBABLE CAUSE finding is not appealed within the time limit stated above the PROBABLE CAUSE finding will be the ONLY issue discussed at conciliation or hearing.

Enc.

cc:

EXHIBIT "B"

The conciliation process is an opportunity for the Parties to resolve this complaint on terms with which both can agree, rather than on terms that are later imposed by this Department or the courts. A successful conciliation also avoids the expense and further time delays that are part of the hearing and appeal process.

The conciliator will want to know from each party the terms on which they would be willing to settle. If those terms involve a monetary sum, that sum should be as specific as possible and should be related to an award that could be achieved if the case went to hearing. The Wisconsin Fair Employment Act allows for the awarding of back pay and other employment benefits if they have been lost due to discrimination, and reasonable attorneys' fees to a prevailing complainant. At present, neither the Department or the Wisconsin courts on appeal from a Department order have the

authority to award punitive damages or damages for emotional harm.

If the parties cannot initially agree on the terms of a settlement agreement, the conciliator may suggest possible compromises or alternatives. If you have not already done so, you may wish to consider obtaining legal counsel. It is not required that you do so inasmuch as the conciliator will assist the parties in their efforts to arrive at a fair settlement.

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY LABOR
AND HUMAN RELATIONS
EQUAL RIGHTS DIVISION

BEVERLY M. SEBETIC,
1863 - 19th Avenue
Kenosha, WI 53140
Complainant,

INITIAL
DETERMINATION
ERD Case
#8452135

v.

KENOSHA CITY AND COUNTY
JOINT SERVICES,
1000 - 55th Street
Kenosha, WI 53140
Respondent.

II. The Charge:

In a COMPLAINT filed on October 18, 1984 with the Equal Rights Division of the Department of Industry, Labor and Human Relations, the Complainant alleges that she was discriminated against by the Respondent because of marital status in regard to discharge in violation of Section

111.31-111.395 of the Wisconsin Statutes.

II. Position of the Complainant: The Complainant states she was discriminated against when she was discharged as a dispatcher because she married a deputy sheriff.

III. Position of the Respondent: William P. Nickolai, attorney representing the Respondent, agreed that all facts as stated in the complaint are correct. However, the Joint Services Board feels that this termination is covered under the terms of the exception to 111.322, i.e., Section 111.345, Stats.

IV. Issues:

A. Was the Complainant terminated because of her marital status?

B. Was the Complainant directly supervising or being directly supervised by her spouse?

V. Persons Interviewed:

A. Beverly M. Sebetic, the Complainant, 1863 - 19th Avenue, Kenosha, Wisconsin 53140, 551-9559.

B. Walter W. Stern, attorney for the Complainant, 5603 Sixth Avenue, Kenosha, Wisconsin 53140, 654-2820.

C. William P. Nickolai, attorney for the Respondent, First Assistant Corporation Counsel, Office of Corporation Counsel, County of Kenosha Courthouse, Kenosha, Wisconsin 53140, 656-6525 (provided all responses for the Respondent).

VI. Exhibits:

A. Investigator's log.

B. Three letters to Arlene Christensen from Walter W. Stern, dated October 17, 1984, December 10, 1984 and December 26, 1984.

C. Copy of letter to Beverly M. Sebetic from Arlene Christensen, dated December 4, 1984.

D. Letter to Arlene Christensen from William P. Nickolai, dated November 28, 1984.

VII. Investigator's Findings:

The Respondent denies the allegation of marital status discrimination.

It is now initially determined that:

A. The Respondent is corrected to Kenosha City & County Joint Services Board.

B. The Respondent, Kenosha City and County Joint Services

Board, is an employer within the meaning of Section 111.31-111.395 of the Wisconsin Statutes.

C. The Complainant is female and married.

D. The Complainant began her employment with the Respondent on November 8, 1982 as a Records Clerk. On January 1, 1983 she became a dispatcher.

E. The Respondent terminated the Complainant on December 30, 1983 pursuant to the policy of the Joint Services Board. The Complainant was rehired on August 27, 1984 as a Records Clerk. The position of Records Clerk is not subject to the policy which originally caused her dismissal.

F. The Complainant was sent a

confidential memorandum on December 23, 1983 from Thomas P. Hagerty, Director of the Kenosha City & County Joint Services, subject: Board policy regarding Joint Services Dispatcher marriages:

> "Pursuant to and consistent with policy established by the Joint Services Board at the meeting of October 27, 1982 that 'a husband or wife of a Kenosha Sheriff's Department deputy or Kenosha Police Department officer will not be hired as a dispatcher . . . ' you are hereby notified that your recent marriage to Deputy Donald Sebetic is on conflict with this established policy. The Joint Services Board reaffirmed this policy at the meeting of December 21, 1983. Specifically, the potential for a conflict of interest is such that no Joint Services Dispatcher shall be permitted to remain in that function subsequent to marriage to a deputy or police officer. In the event that your husband may desire to

and does resign his current position, no such conflict would exist.

Therefore, I am advising you that a decision regarding the resignation of either you or your husband must be made in order to alleviate this potential conflict of interest. This decision must be made no later than Friday, December 30, 1983 at 4:00 p.m. You should advise me in writing of your decision. If no such communication is received at that time, I will take action to terminate you effective at 10:30 p.m. Friday, December 30, 1983.

The Board directed me, however, to place you on a list for the next position available as a clerk in Records or Fleet Maintenance where no such conflict would exist. Should such a position become available, you will be so advised.
Thank you for your time and attention in this matter."

G. The Complainant states she is currently employed by the

Kenosha City & County Joint Services Board as a Records Clerk which is lower paying than the dispatcher job she was discharged from when she married her husband, a deputy sheriff.

H. Walter W. Stern, attorney for the Complainant, informed me a deputy sheriff for Kenosha County would be responsible to the Kenosha County sheriff and the sheriff's direct subordinates. A dispatcher working for the Joint Services is responsible to the Board, in accordance with Section 66.508(5) Wis. Stats. The Joint Services Board was established so that the City Police Department, City Fire Department and Kenosha

Sheriff's Department could function more efficiently by providing more police and fire protection to the citizens. The Joint Services' employees are not police officers, are not sworn personnel and are not supervisors of police officers for the city and county of Kenosha or city firefighters.

In recent agreement between the Kenosha City and County Joint Services Board and Local 2430, Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO, it was recognized that the Kenosha City and County Joint Services Board was the employer of dispatchers. Firefighters

have a separate agreement with the City of Kenosha. Kenosha'a deputy sheriffs have a separate agreement with Kenosha County. The City police officers have a separate contract with the City of Kenosha.

I. The dispatchers for the Kenosha City & County Joint Services Board dispatch for the Kenosha Police Department, the Kenosha Sheriff's Department and the City of Kenosha Fire Department. Dispatching is assigned by the department, the squad available is assigned to the call. The dispatcher has nothing to do with supervising a firefighter or law enforcement officer. A dispatcher cannot just pick

whomever he/she wants to respond to a call. Sergeants for the city or the county law enforcement departments supervise directly the number of squads assigned to a call. If a dispatcher assigns the wrong squad, the sergeant will advise on the radio and the assignment will be corrected. The area assignment policy prevents a dispatcher from supervising squads.

J. The Complainant stated the Board's policy applies only to law enforcement officers. For example, Sharon Martin is a dispatcher and her spouse Don Martin is a Kenosha firefighter. At one time Kip Keckler was a dispatcher

supervisor and his spouse, Kathy Keckler, worked as a firefighter.

CONCLUSION

There is probable cause to believe the Respondent discriminated against the Complainant because of marital status in regard to discharge in violation of Wisconsin Statutes 111.31-111.395.

Dated at Milwaukee, Wisconsin_____

Arlene Christensen
Equal Rights Officer

AC:ns/0955C

cc: Complainant
Respondent
Attorney Walter W. Stern
Attorney William Nickolai

APPENDIX M

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT OF RAYMOND W. GRAM

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD, et al.,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

RAYMOND W. GRAM, being first duly sworn on oath, deposes and says:

1. That he is an adult resident of the State of Wisconsin and since September of 1984 has been the director of the Kenosha City & County Joint

Services (hereinafter "Joint Services"), and as such as custody and control of Joint Services' records.

2. That he has reviewed Joint Services' records pertinent to issues raised in the above-captioned cases.

3. That in 1982, Joint Services hired a total of 16 dispatchers: five were dispatchers hired from the City of Kenosha Fire Department; two were dispatchers hired from the City of Kenosha Police Department; and nine were new hires from a total of 118 applications.

4. That in 1982, the ratio of men to women in the dispatching unit was 3 to 13.

5. That in 1983, Joint Services received 57 applications for four dispatching positions; that two men and two women were hired.

6. That in 1983, 5 men and 16 women worked in the dispatching unit.

7. That in 1984, Joint Services received 109 applications during its March testing period and 241 applications during its July testing period to fill 11 dispatching positions; that 4 men and 7 women were hired.

8. That in 1984, 8 men and 19 women worked in the dispatching unit.

9. That 1 man and 6 women were hired for the dispatching unit in 1985.

10. That in 1985, 7 men and 21 women worked in the dispatching unit.

11. That currently there are 22 dispatchers employed by Joint Services; the ratio of men to women is 3 to 19; there is also one female communications manager employed by Joint Services.

12. That the following represents the base and maximum salaries earned per hour by the dispatchers of Joint Services:

1982: base, $8.00; maximum, $8.90

1983: base, 8.00; maximum, 9.12

1984: base, 8.82; maximum, 9.58

1985: base, 9.30; maximum, 10.11

1986: terms of agreement have not been finalized.

13. That the following represents the base and maximum salaries earned per hour by the records clerks of Joint Services:

1982: base, $7.50; maximum, $8.40

1983: base, 7.90; maximum, 8.62

1984: base, 8.30; maximum, 9.05

1985: base, 8.75; maximum, 9.54

1986: terms of agreement have not been finalized.

14. That this Affidavit is based upon affiant's personal knowledge as otherwise indicated.

s/d/ Raymond W. Gram
Raymond W. Gram

Subscribed and Sworn to
before me this 2nd day
of June, 1986.

/s/ Nancy Van Fuhhergen
Notary Public
Kenosha County, WI
My Commission expires: 8-16-87

APPENDIX N

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

DEBRA HEYDEN,

Plaintiff,

v.

AFFIDAVIT OF ROGER J. SCHOENFELD

File No. 85-C-1493

ROGER J. SCHOENFELD, JOHN D. BILOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BILOTTI, and DONALD ANDREOLI

Defendants.

STATE OF WISCONSIN)
) ss
KENOSHA COUNTY)

ROGER J. SCHOENFELD, being first duly sworn on oath, deposes and says:

1. That he is an adult resident of the State of Wisconsin, currently employed as Chief Deputy of the Kenosha County Sheriff's Department, located at 1000 55th Street in the City of Kenosha.

2. That from approximately April 1982 through April of 1983, he served as

the interim director of the Joint Services Board for the City and County of Kenosha.

3. The Joint Services Board was established in 1981 when authorized by both the common council of the City of Kenosha and the county board of supervisors of Kenosha County.

4. That Joint Services Board had responsibilities with respect to Joint Service functions for the city and county of Kenosha at the Kenosha County Public Safety building, including but not limited to staffing needs, personnel policies, employee relations, budget preparation, administration and general security.

5. The primary function of the Joint Services Board was to provide clerical and dispatching services for theCity of Kenosha police department, the Kenosha County sheriffs department and City of Kenosha fire department.

6. The Joint Servcies Board moved to the new Kenosha County Public Safety Building in May of 1982.

7. The Joint dispatching operation created by the Joint Services Board did not move into the safety building until march 1, 1983. Prior to that time, the city police, city fire and county sheriff's deputies maintained their own dispatching departments.

8. Affiant, as interim director for Joint Services, prepared job descriptions for the Joint Services employees.

9. During the initial testing of applicants for Joint Services dispatching positions, it became apparent that spouses of police officers and sheriff's deputies had become involved in the application process.

10. Because at all pertinent times hereto Joint Services dispatchers had discretion regarding which police officers and sheriff's deputies to assign

to calls, affiant and the Joint Services Board expressed very strong concerns about conflicts which a spousal relationship between dispatcer and officer/deputy may create.

11. Because the marriage relationship is a voluntary, intimate, legally binding relationship between two people presumably based on love and concern for each other, Affiant and the Joint Servcies Board were of the opinion that danger existed that a spouse/dispatcher would or could favor a spouse/officer when faced with the necessity of assigning the officer to a very dangerous call. For instance, the dispatcher could avoid sending his/her spouse to that call even where the spouse/officer may have been the best choice of the available officers for that assignment.

12. Affiant and the Joint Servcies Board also recognized there could be a danger that a spouse/dispatcher aware that a spouse/officer

had been killed or injured on duty, would or could become unable to function adequatley to handle dispatching duties during such a crisis. Where all officers in the field are relying on fast and accurate action by the on-duty dispatcher(s).

13. Additionally, it was the opinion of Affiant and the Joint Services Board that if a dispatcher knew that his/her spouse was on a dangerous call, the dispatcher would most likely pay undue attention to the spouse's activities and tend to miss normal dispatching activity, including radio transmissions and telephone calls.

14. As a result of these concerns, the Joint Services Board instituted a policy that would bar a spouse of a city police officer or county sheriff's deputy from employment as a Joint Services dispatcher because the intiamte marital relationship could tend to cloud the judgment of a dispatcher in

a possible crisis situation where the safety, health and welfare of the pbulic are at stake.

15. Debra Heyden was only an appliant for the position of Joint Services dispatcher while Affiant served as interim director. Ms. Heyden was never hirec for such a position and Affiant informed her of that decision by letter dated December 14, 1982, attached hereto and incorporated by reference as Exhibit "A".

16. This affidavit is made upon personal knowledge and in support of defendants' motion for summary judgment in the above-captioned case.

/s/ Roger J. Schoenfeld
Roger J. Schoenfeld

Subscribed and Sworn to
before me this 30th day
of April , 1986.

/s/Judith S. Capponi
Notary Public
Kenosha County, WI
My Commission: 4/15/90

KENOSHA
CITY & COUNTY
JOINT
SERVICES

December 14, 1982

Mrs. Debra Heyden
6511 - 40th Avenue
Kenosha, WI 53142

Dear Mrs. Heyden:

This will confirm our personal conversation of November 26, 1982 regarding the status of your application with Joint Services.

As you know, the Joint Services Board has decided that, because of possible conflict of interest, husbands and/or wives cannot dispatch their spouses.

The Joint Services Board has further indicated that you will be offered a position in the Records Bureau when openings occur. Currently, the Records Bureau is at full staffing strength.

Because there is one other person with the same set of conditions as you are

experiencing, we drew numbers to determine individual placement on an eligibility list.

You will be number two on said eligibility list for 1983. Should vacancies occur, you will be notified.

Thank you for your patience and interest.

Sincerely,

/s/ Roger J. Schoenfeld

Roger J. Schoenfeld, Director

Boulder

EXHIBIT "A"

APPENDIX O

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT OF ROGER J. SCHOENFELD

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD, et al.,

Defendants.

Civil Action No. 85-C-1455

STATE OF WISCONSIN)
) ss
KENOSHA COUNTY)

ROGER J. SCHOENFELD, being duly sworn under oath, deposes and says:

1. That he is an adult resident of the State of Wisconsin and is currently employed as the Chief Deputy

Sheriff for the Kenosha County Sheriff's Department.

2. That from April 1982 until April 1983 he acted as the interim director of the Kenosha City & County Joint Services (hereinafter "Joint Services") and as such was responsible for, among other things, staffing the dispatching unit.

3. That in approximately July of 1982 affiant caused to be posted job openings for dispatchers for Joint Services at the Kenosha County Courthouse, Kenosha City Hall and other various locations within the City of Kenosha.

4. That approximately 16 dispatchers were hired to staff Joint Services in approximately October of 1982, five of which previously worked as civilian dispatchers for the Kenosha Fire Department and two who previously worked as clerks for the Kenosha Police Department.

5. That prior to formation of the Joint Services dispatching unit, dispatchers for the Kenosha Police Department and Sheriff's Department were primarily male.

6. On or about March 1, 1983 the dispatching unit for Joint Services moved into the newly built safety building.

7. That when the dispatching unit was formed, shifts were assigned to dispatchers by seniority preference.

8. That for the first several months of operation, the dispatchers were assigned to the agency radio with which they last trained; dispatchers wre [sic] also assigned to train on every shift; when all dispatchers were trained to operate the radios for all agencies, dispatchers were routinely rotated on all agency consoles.

9. That there were no working supervisors in the dispatch room until approximately 1984; prior to that time, the dispatch room was managed by the

communications manager, a full-time 40 hour per week management employee.

10. That between approximately August and October of 1982, the Joint Services Board discussed the issue of a no-spouse policy as a result of police and sheriff's deputy's spouses applying for dispatching positions with Joint Services.

11. That on or about October 27, 1982, the Joint Services Board instituted a no-spouse policy based on the following reasons:

a. In an emergency situation when a dispatcher's spouse is on a dangerous assignment or is injured, there is a significant danger that the spouse-dispatcher on duty at that time would neglect his or her dispatching responsibilities; and

b. Ultimately, dispatchers have complete discretion to assign or not to assign a spouse to a call.

12. That although a dispatcher is not a direct supervisor of either the police officers or sheriff's deputies, in the context of those department's chain of command, the officers are under a strict duty to respondent to the call assigned to them by a dispatcher.

13. The Joint Services Board did not apply the no-spouse policy to situations where a dispatcher's spouse is a firefighter because a dispatcher has no discretion in assigning fire calls; he or she is assigning equipment on a fire call, not individual officers.

14. That the type of fire mandates dispatching manpower and equipment which has been determined in advance by Fire Department procedures.

15. That firefighters' shifts do not match those of the police or sheriff's departments or the dispatching unit; firefighters generally work a full 24 hours and then are off for 48 hours.

16. That the no-spouse policy does not apply to record clerks, inasmuch they are not working in emergency situations and do not directly assign work to police officers or deputy sheriffs.

17. That on or about September 14, 1982 affiant did forward a letter to Debra Heyden indicating that her application was being reinstated for consideration for the position of a dispatcher with Joint Services.

18. The reference to Kip Keckler being "grandfathered in" in ¶6 of Richard Heyden's affidavit dated May 15, 1986, is inaccurate. Because the no-spouse policy did not apply where the dispatcher-spouse was a firefighter, Kip Keckler was not affected by the policy. Any reference to grandfathering in made by affiant refers to the fact that Kip Keckler was one of the persons employed as a fire dispatcher prior to the formation of Joint Services and was automatically made a member of

the Joint Services dispatching unit in approximately 1982. (See ¶4, above.)

19. That Mario Barsuli, the communications manager for Joint Services in 1982, did not have authority to extend official offers of employment for the position of dispatcher/complaint taker or any other position in Joint Services in 1982.

20. That because of the Joint Services' no-spouse policy, affiant brought Debra Heyden's and Mrs. John Paul's applications to the attention of the Joint Services Board for its consideration; that the Joint Services Board refused to hire Debra Heyden and Mrs. John Paul because of the no-spouse policy for the dispatching unit.

21. That at no time was Debra Heyden ever officially extended an offer of employment as a dispatcher/complaint taker by Joint Services.

22. That this Affidavit is based upon affiant's personal knowledge except as otherwise indicated.

23. Affiant never formed policies for Joint Services; only the Joint Services Board set policy.

/s/ Roger J. Schoenfeld
Roger J. Schoenfeld

Subscribed and Sworn to
before me this 2nd day
of June, 1986.

Darlene I. Sandberg
Notary Public
Kenosha County, WI
My Commission:

APPENDIX P

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT OF DEBORAH J. TARAN

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHEFFEL, et al.,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) ss
KENOSHA COUNTY)

DEBORAH J. TARAN, being first duly sworn under oath, deposes and says:

1. That she is an adult resident of the State of Wisconsin and since May 14, 1984 has been employed as the communications manager for the Kenosha

City and County Joint Services (hereinafter Joint Services").

2. That as communications manager, affiant's responsibilities include, among other things, supervision of the entire communications operation, hiring dispatchers, assigning dispatchers to shifts per the union agreement and overseeing the rotation of dispatchers on consoles.

3. That affiant is aware of the no-spouse policy instituted by the Joint Services Board on or about October 27, 1982.

4. That it is affiant's understanding that husbands or wives of firefighters for the City of Kensoha Fire Department are not subject to the Joint Services no-spouse policy; that there is no exercise of discretion when assigning fire calls since dispatchers assign fire calls by units and equipment, whereas the law enforcement calls are assigned on an

individual police officer or sheriff's deputy basis.

5. That offering alternate shifts to a dispatcher to alleviate a dispatcher's working conflict with a spouse is not an acceptable accommodation for the following reasons:

a. Overtime is mandatory within the dispatching unit which at times makes overflow to another shift necessary;

b. Dispatchers are routinely allowed to trade work days which, in the absence of the no-spouse rule, would make it necessary to monitor the dispatcher's spouse's schedule in addition to the dispatcher's schedule in order to meet the concerns which are the basis for the no-spouse rule. (See Schoenfeld Aff. ¶ 11). The schedules of police officers and sheriff's deputies are outside the managerial authority of affiant; and

c. The dispatchers' union contract allows for selection of shift and overtime on a seniority basis.

6. That assignment to a console outside of a dispatcher's spouse's agency is not an acceptable accommodation to alleviate the working conflict with a spouse for the following reasons:

a. Cross training of dispatchers among the law enforcement and fire agencies is a priority within the dispatching unit;

b. In an emergency situation, all dispatchers must be able to handle any agency's radio;

c. The police radio is more active than other agencies; the work assignments to the law enforcement and fire agency radios must be rotated among all dispatchers to even out the workload since the rate of pay is the same for the dispatchers, regardless of which console they staff; and

d. The communications room is set up to handle all agencies in the same room. The radios on each console are interchangeable so that any agency can be

staffed at any console at any time.

7. That the dispatcher can exercise discretion on law enforcement calls in the following areas:

a. To arrange the computer to make assigments by officers in roving squad cars or by officers pre-assigned to certain areas;

b. To decide whether or not to send a backup unit on a call;

c. To hold calls for an area squad until it becomes available to handle the call or to assign another squad; and

d. To hold calls for oncoming shifts or assigning the call to the existing unit resulting in overtime to the officers.

8. That currently dispatchers override the computer system assigning officers to calls approximately 50% to 80% of the time.

9. That a dispatcher assigns work to police officers and sheriff's deputies

in or outside of the areas assigned to those officers. Additionally, the police officers and sheriff's deputies who are monitoring the radio calls can inform the dispatcher that they want to be assigned to a particular call.

10. That the dispatcher position is a very stressful position for the following reasons, among others:

a. A dispatcher assigns officers to life threatening situations;

b. There is a high degree of anxiety when the phone rings in the dispatch room because the dispatcher never knows if it will be an emergency or a mundane call;

c. The dispatcher is dependent on equipment;

d. The dispatcher must decide what information is necessary to elicit from a caller in order to adequately inform and prepare an officer for the call;

e. The dispatcher's decision

must be made on the limited information he or she receives from the caller; and

f. A dispatcher is sending a coworker into an unknown, and therefore, potentially life threatening situation.

g. The dispatcher is the lifeline to the officers in that the dispatchers are the stable base of operation and central source of information for the officers.

11. That this Affidavit is based upon affiant's personal knowledge except as otherwise indicated.

/s/ Deborah J. Taran
Deborah J. Taran

Subscribed and sworn to before me
this 2nd day of June, 1986.

/s/ Nancy Van Fuhhergon
Notary Public, State of Wisconsin
My Commission expires: 8/16/87

APPENDIX Q

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

AFFIDAVIT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD, JOHN D. BIAGOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BIAGOTTI, JAMES FUNK, and DONALD ANDREOLI,

Defendants.

Civil Action No. 85-C-1493

STATE OF WISCONSIN)
) SS
KENOSHA COUNTY)

SFASCIOTTI & STERN
5511 - 11th Avenue
Kenosha, WI 53140
(414) 652-2150

Debra Heyden, being first duly sworn on oath, deposes and says as follows:

1. That I am the plaintiff in the above entitled action, and is [sic] a female.

2. That your affiant is responding to the motion for summary judgment and singular affidavit filed by the defendants, and the consolidated motion for summary judgrent filed by plaintiffs.

3. That your affiant applied for a dispatcher/complaint taker position for the Kenosha City and County Joint Services on September 14, 1982.

4. That your affiant was informed on September 29, 1982, by Mario Barsuli the then communications manager for the Kenosha City and County Joint Services that the dispatcher/complaint taker position for Joint Services was mine and said Mario Barsuli asked me how soon I could start employment.

5. That I informed the communications manager, Mario Barsuli, that I had to give one week's notice to Pleasant Prairie Police Department, where I was working as a dispatcher, but would then be ready to assume employment.

6. That the next day, I gave Ray Graham, Pleasant Prairie Chief, a written notice that I was leaving my position and that I was assuming a position as dispatcher/complaint taker for the Kenosha City and County Joint Services.

7. That at no time during the interview did I hide the fact that I was married to deputy sheriff for Kenosha County, Richard Heyden, nor did anyone tell me that my marital status would in any way negatively effect my being hired for the position of dispatcher. See job description marked Exhibit "A" and incorporated into this affidavit by reference.

8. That at no time during the hiring process did any agent for Kenosha City and County Joint Services indicate to me that, because of an antispouse policy, I could work on another shift than my husband nor did anyone indicate that the Kenosha City and County Joint Services' position of dispatcher would involve any type of supervision over my husband during the course of his employment, for another employer i.e., Kenosha County.

9. That at the time I applied for the position of dispatcher/complaint taker I had been a dispatcher for Pleasant Prairie Police Department and was certified by the State of Wisconsin as a dispatcher.

10. That as a condition to my being hired for the position, I filled out an application; passed a typing test which qualified me for the dispatcher position; and was informed by defendant, Roger J. Schoenfeld, that I was

reinstated to the position of dispatcher, such letter marked as Exhibit "B" and incorporated into this affidavit and made a part hereof by reference.

12. That because of your affiant's qualifications and past employment, your affiant, after the testing, was deemed fully qualified for the position, by defendants.

13. That your affiant on or about September 27, 1982, was informed by Mario Barsuli, that I should be fitted for a uniform for my employment.

14. That prior to the time I was fitted for a uniform for my employment, approximately on September 30, 1982, I was informed by Mario Barsuli, that I was terminated and that he could not discuss the reasons at all.

15. That between September 30,1982, and November 26, 1982, your affiant talked with Mario Barsuli several times and never did understand what the

reasons were for my termination, except he said "it was very unfair."

16. That on or about November 26, 1980, myself and my husband, Richard Heyden, talked personally with defendant Schoenfeld concerning why I was terminated. I had indicated to defendant Schoenfeld that there was conflicting stories about why I was not permitted to resume employment with Joint Services.

17. That defendant Schoenfeld indicated that the reason why I could not work was because of nepotism, and that different shifts made no difference. I asked defendant Schoenfeld to explain why it would not make any difference for me to work a different shift than my husband, a deputy sheriff, and I simply got the explanation that I was married to a deputy sheriff and he was opposed to that arrangement. See letter of December 14, 1982 marked Exhibit "E".

18. That your affiant was told by defendant Schoenfeld that he favors an

antinepotism policy and, however, there was not such a policy in effect for Joint Services. That defendant Schoenfeld then indicated that he was going to attempt to get a antinepotism policy in effect, through Joint Services.

19. That your affiant and husband, Richard Heyden, went to visit the Kenosha County Executive, Gilbert J. Dosemagen, because of the concern over what had happened to me.

20. That on February 25, 1983, I was informed by Gilbert J. Dosemagen that in fact there was a husband/wife rule which was adopted by the Joint Services Board on or about October 27, 1982.

21. That attached to this affidavit by reference hereto and made a part hereof is a Joint Services Board policy indicating that "a husband or wife of a sheriff deputy or police officer will not be hired as dispatcher and that the two wives who are subject of

discussion would be offered a position in the records department." That this document is marked Exhibit "D".

22. That after my investigation concerning the husband/wife rule, I learned that the Joint Services does not have a husband/wife policy for records clerks who have contact with police officers and deputy sheriffs through the Joint Services concerning taking complaints; bond; warrants; etc. I also discovered that there was no antinepotism policy with regard to other relatives, for example an uncle or aunt or brother or sister could be dispatchers of deputy sheriffs on the same shift and could be hired. I lastly discovered that a person could be hired as a dispatcher/complaint taker even though her spouse was employed as a firefighter for the Kenosha City Fire Department.

23. That economically I was able to work for Pleasant Prairie Municipality as a dispatcher after my

termination by defendants, at great loss of wages and self esteem. That on or about July 25, 1983, I commenced employment for Joint Services in records.

/s/ Debra Heyden
Debra Heyden

Subscribed and Sworn to
before me this 15th day
of May, 1986.

/s/ Walter W. Stern
Notary Public
Kenosha County, WI
My Commission:

A-144

N O T I C E

DATE: March 24, 1982

TO: Interested Persons

FROM: Joint Services Board

SUBJECT: Job Opening for Dispatcher at the Public Safety Bldg.

The Joint services Board has several openings for DISPATCHER/COMPLAINT TAKER for the Public Safety Building. The description for this position is attached.

In addition to the job description the following information is provided.

The persons assigned to this position can expect to work a rotating day off schedule and rotating shift schedule.

Applicants will be required to submit to a background and records check.

A typing test will be given in addition to a test of a person's aptitude. In

addition, a complete and accurate application is required. Failure to comply will result in disqualification.

Normal fringe benefits given to existing local government employees will be provided with some variations.

EXHIBIT "A"

Application forms may be obtained from either the City or County Personnel Offices. Completed applications must be returned to these respective offices by 5:00 PM on April 2, 1962.

PUBLIC SAFETY BUILDING

POSITION:

Dispatcher/Complaint Taker

DEFINITION:

This is entry level public safety communications work involving the operation of fixed or mobile two-way radio equipment, telephone and

teletype equipment in the central communications center. Person in this class functions as the communications link between public safety agencies (fire, police, rescue and Sheriff) mobile units and central dispatch, and from central dispatch to outside public safety agencies (law enforcement, fire and rescue). Based upon information received from telephone, teletype and two-way radio transmissions, employees are responsible for directing fire, patrol and rescue vehicles to specific areas to cover emergency situation, requests for assistance and calls for service. In addition, information is provided to law

enforcement mobile units and other law enforcement agencies relative to vehicle registration, drivers licensing and other motor vehicle related matters. Employees normally work specific shifts that cover a 24 hour operation, on a rotating day off basis. Work is performed under the general direction of a communications supervisor.

EXAMPLES OF WORK:

Performs a variety of tasks as a communications dispatcher and a telephone complaint taker. Although not restricted to the following, the majority of duties include:

Answering of central communications center telephones and the gathering

of emergency and non emergency related information.

Recording of date for actual dispatch purposes on forms or Cathod Ray Tubes (C.R.T.'s- Computer Terminals).

Send and receive two way voice transmissions with mobile emergency vehicles. In so doing provide the mobile unit with necessary and pertinent information. Receives, determines action, and transmits messages pertaining to law enforcement or emergencies, patrol equipment, local police and fire radio stations and other state and national law enforcement agencies.

Determines the need for and re-assigns on-duty vehicles.

Aids in the coordination of police efforts in the apprehension of law violators and in the handling of emergency situations by providing an essential communication and information gathering service.

Arranges for the safety of the patrol officers or fire fighters when the security of the individual is in question.

Enter and receive records checks and license checks into the State of Wisconsin TIME teletype system, the NCIC national teletype system and the internal records system.

Monitor public safety alarms and when necessary dispatch the appropriate agency.

Activate voice warning systems, pagers, sirens, fire stations and other related

functions through encoder system.

When so requested, notify other agencies of service needs or impending problems.

May compile road reports and traffic conditions to be broadcast over local radio stations or placed in other news media.

Maintains extensive logs and records on all radio dispatches received or transmitted.

Performs related work as required.

QUALIFICATIONS:

The required knowledges, skills and abilities shall include:

Ability to speak clearly and to understand radio messages and signals.

Ability to follow instructions and to think and react quickly in emergency situations.

Ability to learn teletype operation and two-way radio dispatching and receiving methods and techniques, along with data entry into computer terminals.

Ability to learn regulations of the Federal Communications Commission covering the operation of radio telephone equipment.

Understand clearly defined instructions with a minimal need for repeated clarification.

Even temperament with the ability to remain cool and collected under stressful conditions.

Must survive a records and background investigation.

Type or enter data at a rate of at least 30 words per minute.

TRAINING AND EXPERIENCE:

Must be a high school graduate or

G.E.D. equivalent as a minimum. In addition, the following are considered mandatory:

At least one year of responsible work experience, or any equivalent combination of training and experience.

RATE OF PAY:

Start at $8.00 per hour with a graduated range to $8.89 per hour.

KENOSHA
CITY & COUNTY
JOINT SERVICES

September 14, 1982

Ms. Debra L. Jakielski
6511 - 40th Avenue
Kenosha, WI 53142

Dear Ms. Jakielski:

Your letter of August 29, 1982 was received yesterday, September 13, 1982 by Joint Services.

I have personally reviewed your application and provide you with the following information:

1. Your typing test revealed your score to be 33 wpm;
2. The dispatcher position requires a typing speed of 30 wpm; and
3. Your application had been misfiled under the position of clerk which required a typing speed of 40 wpm. This resulted in

your notification of not passing the typing test.

Therefore, your application will be reinstated for the position of dispatcher. You will be notified within the next few days of your interview date.

Sincerely,

/s/ Roger J. Schoenfeld

Roger J. Schoenfeld

Director, Joint Services

RJS:jag

EXHIBIT "1"

KENOSHA

CITY & COUNTY

JOINT SERVICES

September 20, 1982

Dear Applicant:

You have successfully passed the interview for Dispatcher/Complaint Taker.

The next step will be for you to come in for a Dispatcher/Complaint Taker test at the Kenosha County Safety Building at 1000 - 55th Street, Kenosha, WI.

Due to the fact that the testing has a completion date, this test cannot be rescheduled. If, for some reason, you do not want to be tested, please call Mario J. Barsuli at (414) 656-7352.

Your Test is scheduled for MONDAY, September 27, 1982 at 1:00 PM o'clock.

Sincerely,

/s/ Mario J. Barsuli

Mario J. Barsuli

Joint Services

Communications Manager

MJB:lag

EXHIBIT "C"

JOINT SERVICES BOARD

October 27, 1982

A meeting of the Joint Services Board was called to order by Chairman Paul Whiteside, Sr. at 4:00 p.m. on Wednesday, October 28, 1982 in the Joint Services Conference Room in the Public Safety Building.

Those members in attendance were Paul Whiteside, Sr., Mayor John D. Bilotti, John A. Serpe, Stanley Kerkman and Eugene Bilotti. Mr. James Fonk joined the meeting at 4:10 and Mr. Donald Andreoli at 4:15 p.m. Also in attendance was Roger Schoenfeld and Mr. James Warzon entered at 4:15 p.m.

Mayor Bilotti made a motion, seconded by Mr. Kerkman to approve the minutes of the meeting held September 29, 1982 as written. The motion carried unanimously. Under comments, there were none.

The first item on the agenda was the Proposed 1983 Budget. Mr. John Serpe made a motion to defer this item until

the next meeting of the Board due to the fact that he had just received the budget and had not yet had an opportunity to review. Mayor Bilotti seconded the motion which then passed unanimously. The next item on the agenda was the Employee Health Insurance. Mr. Whiteside inquired if the proposal was comparable to the plans offered by the City and the County. Mr. Schoenfeld explained that the plan was as comparable as it could be in that the County is self-insured and the City is partially self-funded. He further stated that the proposal could not be compared to the City plan because of size and experience. Mayor Bilotti questioned whether the insurance was put out on bid. Mr. Schoenfeld answered that the Board had previously indicated that Joint Services would deal with the existing City insurer. The Mayor further asked if it was not the intention of the Board to go with WPS for a one year period only and then attempt to receive

bids. Mr. Whiteside indicated that this was the case.

Mr. Serpe indicated that the benefits offered were basically the same as the City and apparently close in cost. Mr. Schoenfeld stated that there is a 90 day waiting period for coverage for employees as previously set by the Board however, all employees that are on board as of November 1st will be covered immediately. All employees hired and starting after November 1 will then come under the 90 day waiting period. Mr. Serpe asked how many employees were actually hired and started. Mr. Schoenfeld stated thirty-four.

Mr. Whiteside called for a motion on the item. Mr. Serpe questionsed what would happen to displaced City employees for coverage and would they have to wait the ninety day period. Mr. Schoenfeld said that there were some City and County employees to yet start but in these few instances they would be covered

automatically upon transfer from another unit of government.

Mr. Kerkman asked how many of the 34 had started within the last 30 days. Mr. Schoenfeld stated approximately one-third. after further discussion concerning the City employees not yet hired, Mr. Fonk made the suggestion that the coverage and waiting period are administrative decisions and not required to be addressed by the Board. Mr. Eugene Bilotti then made a motion to approve the WPS proposal for health insurance coverage with all employees starting employment before November 1, 1982 to begin coverage immediately and all employees transferring from other governmental units to be covered under the policy immediately upon starting employment, and all employees beginning employment after the November 1, 1982 date to serve the 90 days waiting period. Mr. Fonk seconded the motion which passed unanimously

The next item on the agenda was Employee Life Insurance. Mr. Schoenfeld stated that the Board had already approved the State Life Insurance plan but would have to pass an official Resolution to become a participant. He further stated that the additional Resolution was for the Board's information as another service that is offered by the State for Employee's Spouse and Dependents. Mayor Bilotti made a motion, seconded by Mr. Serpe to adopt the Resolution to become a participating member of the State of Wisconsin Department of Employe Trust Funds Group Life Insurance Plan. The motion passed unanimously.

With reference to the Spouse and Dependent coverage, it was pointed out that neither the City nor the County offer the option. Mr. Serpe made a motion, seconded by Mayor Bilotti, to receive and file the Resolution. The motion carried unanimously.

The next item on the agenda was Liability

Insurance. Mr. Schoenfeld stated that he had attempted to receive competitive proposals from both the City and County carrier, however, the City carrier was unable to provide Errors and Omissions coverage without subcontracting that portion. Mr. Whiteside asked if it included both Liability and Workman's Compensation insurance and Mr. Schoenfeld indicated it did. Mr. Fonk asked just what a public official would be considered on the Board. Mr. Schoenfeld stated that the members of the Board and the administrative staff appointed by the Board. Mr. Fonk asked if it would include Mr. Schoenfeld and his girl and Mr. Schoenfeld indicated that it would. Mr. Eugene Bilotti made the motion to adopt the plan and purchase the coverage as proposed by Laub Group. Mr. Fonk seconded the motion which carried unanimously.

The next item on the agenda was Joint Services records. Mr. Schoenfeld stated

that a situation was created when the Board and Joint Services began functioning in the Safety Building in that the official minutes remained on file with the previous secretary who was responsible for the minutes in the Mayor's office and some were in the possession of the Chief Deputy of the Sheriff's Department. He recommended that the Board consolidate all official Joint Services minutes and records into one location. Mr. Whiteside made a motion, seconded by Eugene Bilotti, to approve the recommendation of the Director. The motion carried unanimously.

The next item on the agenda was the Vending. Mr. Schoenfeld indicated that the Board has previously authorized ARA Vending to install machines in the Safety Building and the contract was now prepared and needed to be signed. It was clarified that the contract was for a period of 90 days after which either

party could terminate after 60 days written notification. Mr. Fonk made a motion, seconded by Mr. Kerkman to authorize the Director to sign the contract for the Joint Services Board. The motion carried unanimously.

Mr. Andreoli made a motion to go into closed session pursuant to Wis. Stats.19.85 (1) (c) regarding compensation and employment procedures, said motion to include all those in attendance. With respect to the inclusion, Mr. Fonk suggested that Mr. Warzon be permitted to remain only as long as the items that required his presence were heard. Mr. Andreoli amended the motion. The motion was seconded as amended by Mr. Fonk and carried unanimously on a roll call vote.

Mr. Serpe made a motion, seconded by Mr. Fonk, to reimburse Ms. Judith Ruffolo the rate of pay that was deducted for the three annual days by the City payroll upon submission of a voucher for the

expense, excluding the withholding of any taxes. This action will be without precedent and to settle a claim of the employee. The motion carried unanimously.

The questions raised regarding the displaced City employees were addressed by a motion by Mr. Fonk, seconded by Mr. Eugene Bilotti, to refer the matter to the City Personnel Department for clarification who would then meet with the Director and come back to the Board with a recommendation. Motion carried unanimously.

The policy was set by the Board that a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher and that the two wives who were the subject of the discussion would be offered a position in the Records Dept.

Mr. Andreoli made a motion, seconded by Mayor Bilotti to return to open session. Motion carried unanimously.

Under progress, Mr. Schoenfeld stated that he had looked into opening a trust account for the bond receipting monies that earned interest and was informed by Brown Bank that municipalities are prohibited by law from using an interest bearing trust account. The Board directed Mr. Schoenfeld to further investigate the possibility of investing the monies and to report back to the Board.

Mr. Fonk stated that for the Board's information, Mr. Schoenfeld's detached service from the Sheriff's Department would expire on November 1, 1962 and that the Chairman of the Sheriff's Committee would recommend to the County Board to continue the detached service for a period of time necessary to complete the matters with Joint Services.

Mr. Schoenfeld stated that the Communications Center was 98% completed but that until a core of people were trained to handle the dispatch functions

it would be unwise to commence service from the location.

On a question from Mr. Serpe on the additional vehicle that was purchased for Joint Services use, Mr. Schoenfeld responded that the second vehicle would be a general purpose vehicle and available to the staff when it was needed.

Mr. Andreoli made a motion to adjourn the meeting at 5:55 p.m. Mayor Bilotti seconded the motion which carried unanimously.

EXHIBIT "D"

KENOSHA
CITY & COUNTY
JOINT
SERVICES

M E M O R A N D U M

To: Ms. Beverly Pettis-Sebetic

From: Thomas P. Hagerty, Director

Subject: BOARD POLICY REGARDING JOINT SERVICES' DISPATCHER MARRIAGES

Date: December 23, 1983

Pursuant to and consistent with policy established by the Joint Services Board at the meeting of October 27, 1982 that "a husband or wife of a Kenosha Sheriff's Department deputy or Kenosha Police Department officer will not be hired as a dispatcher...", you are hereby notified that your recent marriage to Deputy Donald Sebetic is in conflict with this established policy. The Joint Services Board reaffirmed this policy at

the meeting of December 21, 1983. Specifically, the potential for a conflict of interest is such that no Joint Services Dispatcher shall be permitted to remain in that function subsequent to marriage to a deputy or police officer. In the event that your husband may desire to and does resign his current position, no such conflict would exist.

Therefore, I am advising you that a decision regarding the resignation of either you or your husband must be made in order to alleviate this potential conflict of interest. This decision must be made not later than Friday, December 30, 1983 at 4:00 p.m. You should advise me in writing of your decision. If no such communication is received at that time, I will take action to terminate you effective at 10:00 p.m. Friday, December 30, 1983.

The Board directed me, however, to place you on a list for the next position

available as a clerk in Records or Fleet Maintenance where no such conflict would exist. Should such a position become available, you will be so advised.

Thank you for your time and attention in this matter.

TPH:lag

cc: M. Barsuli, Communications Manager
Joint Services Board

EXHIBIT "B"

KENOSHA
CITY & COUNTY
JOINT SERVICES

December 14, 1982

Mrs. Debra Heyden
6511 - 40th Avenue
Kenosha, WI 53142

Dear Mrs. Heyden:

This will confirm our personal conversation of November 26, 1982 regarding the status of your application with Joint Services.

As you know, the Joint Services Board has decided that, because of possible conflict of interests, husbands and/or wives cannot dispatch their spouses.

The Joint Services Board has further indicated that you will be offered a position in the Records Bureau when openings occur. Currently, the Records Bureau is at full staffing strength.

Because there is one other person with the same set of conditions as you are experiencing, we drew numbers to determine individual placement on an eligibility list.

You will be number two on said eligibility list for 1983. Should vacancies occur, you will be notified.

Thank you for your patience and interest.

Sincerely,

/s/ Roger Schoenfeld

Roger J. Schoenfeld,

Director

RJS:jag

EXHIBIT "L"

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the next meeting of the Board due to the fact that he had just received the budget and had not yet had an opportunity to review. Mayor Bilotti seconded the motion which then passed unanimously. The next item on the agenda was the Employee Health Insurance. Mr. Whiteside inquired if the proposal was comparable to the plans offered by the City and the County. Mr. Schoenfeld explained that the plan was as comparable as it could be in that the County is self-insured and the City is partially self-funded. He further stated that the proposal could not be compared to the City plan because of size and experience. Mayor Bilotti questioned whether the insurance was put out on bid. Mr. Schoenfeld answered that the Board had previously indicated that Joint Services would deal with the existing City insurer. The Mayor further asked if it was not the intention of the

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authorize the Director to sign the contract for the Joint Services Board. The motion carried unanimously.

87-387

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

No. _____

Supreme Court, U.S.
FILED
SEP 28 1987
JOSEPH F. SPANIOL, JR.
CLERK

* *

DEBRA HEYDEN,

Petitioner,

vs.

ROGER SCHOENFELD, JOHN D. BILOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BILOTTI, JAMES FONK, and DONALD ANDREOLI,

Respondents.

* *

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Bernard R. Vash
Dolores A. Bomrad
Kenosha Co. Corporation Counsel
1006 - 56th Street
Kenosha, WI 53140
(414) 656-6525

Counsel for Respondents

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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QUESTION PRESENTED

SHOULD THE SUPREME COURT ABANDON THE RATIONAL BASIS TEST FOR GENDER BASIS EQUAL PROTECTION CHALLENGES, ON A CASE INVOLVING A LOCAL GOVERNMENTAL SAFETY RULE THAT PROVIDED SPOUSES OF LAW ENFORCEMENT OFFICERS MAY NOT BE EMPLOYED AS COMMUNICATIONS DISPATCHERS SERVING SUCH LAW ENFORCEMENT AGENCIES, IN FAVOR OF THE STRICT SCRUTINY TEST?

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STATEMENT OF THE CASE

In October, 1985 Petitioner, Debra Heyden, filed a complaint with the United States District Court for the Eastern District of Wisconsin based on 42 U.S.C §1983, alleging violations of the Fourteenth Amendment Due Process and Equal Protection Clauses based upon the refusal of the of the Kenosha City and County Joint Services Board (hereinafter "Joint Services") to hire her as a dispatcher.

Respondents are individuals who were members of the Joint Services Board when Petitioner was refused employment in December of 1982.

The Joint Services Board is a quasi-governmental agency authorized by state statute. Wis. Stats. sec. 66.508. (A-10). Joint Services is not a county department. Joint Services' primary function is to provide administrative

support and dispatching services to the Kenosha County Sheriff's, City of Kenosha Police and City of Kenosha Fire Departments. Joint Services does not have the power to hire, fire or regulate the shifts of law enforcement officers. Joint Services has the legislative power to enact appropriate rules and regulations for the ". . . government, operation and maintenance of the safety building and employees thereof." Wis. Stats. sec. 66.508(7)(d). (A-10).

On October 27, 1982, Joint Services promulgated a written policy directive which provides that ". . . a husband or wife of a Sheriff's Deputy or Police Officer will not be hired as a dispatcher . . ." and that the spouses rendered ineligible for employment as dispatchers ". . . would be offered a position in the records department."

The reason for the refusal to

hire Petitioner as a dispatcher was that she was married to a Kenosha County Sheriff's Deputy.

Petitioner was offered a position in the Joint Services records bureau which she accepted in July of 1983 (A-143).

The job which Petitioner sought involved ". . . public safety communications work . . ." where dispatchers ". . . are responsible for directing fire, patrol and rescue vehicles to specific areas to cover emergency situations, requests for assistance and calls for service." (A-146). The qualifications for the job as dispatcher include the ability ". . . to think and react quickly in emergency situations" and an "even temperment with the ability to remain cool and collected under stressful conditions." (A-150, 151).

Joint Services dispatchers are the essential communications link between public safety agencies (law enforcement officers) and the information available concerning emergency situations (A-146). They determine and exercise discretion in the need for action regarding law enforcement emergencies, assigning vehicles and arranging ". . . for the safety of the patrol officers or firefighters when the security of the individual is in question."

Joint Services dispatchers are unionized. Their union contract allows them to select shifts based upon seniority.

Dispatchers must work overtime into the next shift at times. Dispatchers trade work days and shifts as necessary. (A-130).

On May 1, 1986 Respondents filed a motion for summary judgment with supporting materials.

On May 21, 1986 Petitioner filed a cross motion for summary judgment on the liability issues.

The district court granted Respondents' motion for summary judgment in a decision and order dated August 12, 1986 (A-5), finding that the ". . . no-spouse policy was designed to reduce the incidents of dangerous accidents and mishaps which can occur where the dispatcher's spouse is a police officer or Sheriff's deputy." (A-17). Petitioner appealed from the judgment entered based upon that order.

On May 21, 1987 the United States Court of Appeals for the Seventh Circuit affirmed the district court's order and adopted its opinion in full (A-1). Petitioner has filed a petition for writ

of certiorari with this Court seeking review of the Court of Appeals decision.

This brief is respectfully submitted in opposition to the petition for writ of certiorari.

I. THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT FOLLOWED SUPREME COURT STANDARDS IN EVALUATING PETITIONER'S EQUAL PROTECTION AND DUE PROCESS ATTACKS ON THE NO-SPOUSE POLICY.

A. The Court of Appeals Correctly Determined That The Rational Basis Test Applies To The Equal Protection Attack On A Legislative Rule.

The Court of Appeals observed that the Petitioner argued the no-spouse policy created an unreasonable classification in violation of the Fourteenth Amendment equal protection clause of the United States Constitution because it does not apply to the spouses of Kenosha firefighters, to close family relatives other than spouses, or to record keepers who also have close daily contact with law enforcement officers. The Seventh Circuit followed the Supreme Court standard as set forth in City of Cleburne, Tex v. Cleburne Living Center, 105 S.Ct. 3249, 3254, (1985), for the proposition that generally, legislation

or official government action challenged as denying equal protection of the laws "is presumed to be valid and will be substained if the classification drawn ... is rationally related to a legitimate [governmental] interest." (A-16). The court also observed the rule, "[I]n assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification," citing Personnel Administrator of Mass. v. Feeney, 442 U.S. 256, 272, (1979).

The Petitioner acknowledges in her brief that this is the correct standard to be applied unless the classification burdens a "suspect class or a fundamental interest." (Petition pp. 26-27). The exceptions do not apply.

1. Not A Suspect Class

The Joint Services Board's no-spouse policy is not a classification

based upon gender. It is a neutral classification in the sense that it is not gender-based, established to assure public safety. For purposes of applying the correct test on the equal protection argument, this Court has decided that classifications based upon gender are not recognized as an inherently suspect class. Frontiero v. Richardson, 411 U.S. 677, (1973). Thus, the exception to the rational relationship test when dealing with a suspect class does not apply.

This Court repeated its instruction that the strict scrutiny test does not apply to gender-based classifications in Michael M. v. Superior Court, 450 U.S. 464, (1981) where at p. 468 it stated:

> Unlike the California Supreme Court, we have not held that gender-based classifications are "inherently suspect" and thus we do not apply so-called "strict scrutiny" to those classifications...

The Michael M. case truly involved gender-based classifications, unlike the fact situation before the Court in the present case. At any rate, it is clear that this Court has unequivocally instructed lower courts that strict strutiny does not apply to gender-based classifications.

2. There Is No Fundamental Right To Governmental Employment

The other exception to the rational basis test applies only when the classification impermissibly interferes with a fundamental right. Mrs. Heyden was an applicant for the dispatcher position with a local governmental unit and it is undisputed that her lawsuit is predicated entirely on Joint Services' refusal to hire her. The right to government employment is not a per se, fundamental right within the meaning of the Fourteenth

Amendment. Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 313, (1976) held that "this court's decisions give no support to the proposition that a right of governmental employment per se is fundamental." In accord, Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979). In Dandridge v. Williams, 397 U.S. 471, 485, (1970), this Court expressly stated that a standard less than strict scrutiny has consistently been applied to state legislation restricting the availability of employment opportunities.

Since the considerations of a suspect class and a fundamental right do not apply, the Court of Appeals utilized the appropriate standard of review.

B. The Court of Appeals Properly Applied the "Rational Basis" Test To This No-Spouse Policy.

The Court of Appeals and District

Court were guided by the following language stated in Murgia:

> We turn then to examine this state classification under the rational-basis standard. This inquiry employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary. Dandridge v. Williams, supra, at 485. Such action by a legislature is presumed to be valid.

supra at 314

The Court of Appeals reached the logical conclusion that the no-spouse policy was designed to reduce the incidence of dangerous accidents and mishaps which can occur where a dispatcher's spouse is a police officer or sheriff's deputy, and, further, that the policy bore a rational relation to and was a rational means of serving the Board's legitimate end (A-5).

Petitioner expectedly challenges the Court of Appeals' and District Court's analysis. We submit that the courts correctly applied the test. The Court of Appeals found that "there is no real dispute regarding the defendants' motivation and perceived justification for establishing the no spouse policy." (A-12). The genesis of the policy was that if a dispatcher's spouse was a law enforcement officer an emergency situation could give rise to a concern for the welfare of the spouse when the dispatcher was confronted with an emergency that required quick and efficient action (A-12, 13). While that type of confrontation or crisis may not be a daily occurrence in a dispatcher's job, it is inherent and the risk potential is very high.

In formulating and interpreting the rational basis test for legislative

pronouncements, the federal courts have been pragmatic. The objectives of a particular rule need not be specifically articulated by the promulgating body. U.S. Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 179 (1980) reh'g. den. 450 U.S. 960 (1981).

If any state of facts may reasonably be conceived to justify a particular rule, the classification in the rule must be sustained. McGowan v. Maryland, 366 U.S. 420, 426 (1961).

As the court of appeals and district court concluded, Joint Services' classification in the instant case was "well within the legislative prerogative." (A-17). The court aptly pointed out several "equally rational grounds" upon which it could be sustained including the elimination of either the potential for a serious injury or inefficiency or disruption in

the delivery of crucial public services (A-17). A regulation for the social welfare or public safety is accorded a "... presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality." Ass'n. of Civil. Tech., Mont. Air Chap. v. F.L.R.A., 756 F.2d 172, 177-178 (D.C. Cir. 1985); City of Cleburne, Tex. v. Cleburne Living Center, 105 S.Ct. 3249 (1985).

The Petitioner's supporting affidavits clearly did not establish sufficient indicia of arbitrariness and irrationality. In large part they were subjective, argumentative opinions which skirted the core issue as to the justifiable reasons for the formulation of the policy and its propriety within the police and sheriff units. Petitioner's statement concerning percentage of males in the police, fire

and sheriff's departments is not supported by anything in the record and is not accurate. (Petition-47).

At the crux of the Court of Appeal's decision is the plain fact that emergencies can and will occur in law enforcement work and that compounding factors such as spousal concern may legitimately be removed from that setting. Notwithstanding Petitioner's tortuous efforts to deny a dispatcher's key emergency role, it is indisputably ingrained in the position. The Court of Appeals relied upon Petitioner's own affidavit to illustrate the point that dispatchers are confronted with sudden dangerous situations which they handle with a large degree of discretion and resourcefulness. (A-11, 12).

Mr. Roger Schoenfeld, former director of Joint Services and Chief Deputy Sheriff, articulated in an

affidavit supporting the defendants' motion for summary judgment the Joint Services Board's objectives in establishing this rule. They are, among others, (1) a danger that a dispatcher might be reluctant to send his/her spouse officer to a dangerous call, (2) potential inability to function in an emergency if a spouse officer were killed or injured on duty, (3) a danger that a dispatcher might pay undue attention to a spouse-officer's duty activities in a danger situation at the expense of other required duties (A-115).

In its decision the Court of Appeals carefully considered and rejected the plaintiff's equal protection arguments as a matter of law. Relying on several Supreme Court cases, the court held that the no-spouse policy reflects a valid legislative classification (A-17 thru 21).

The applicable law is rather clear that any statute or rule need not be perfect, all-encompassing, or mathematically exact. New Orleans v. Dukes, 427 U.S. 297, 303 (1976). The Petitioner's contention, that because the rule doesn't include firefighters or close relatives other than spouses within its purview it violates the Equal Protection Clause, runs headlong into this Court's holding that imperfect classifications are not a basis for their invalidity. In U.S. Railroad Retirement Bd. v. Fritz, supra, at page 175.

Although exclusion of firefighters from the policy would not render it violative of the Fourteenth Amendment, it appears as a matter of record that there was a logical and legitimate basis for excluding firefighters because dispatchers in the

fire department had no discretion in assigning fire calls to individual officers. Also, the fire department operation had different shift and personnel requirements (A-124).

When arguing that other county departments have no similar rule, the Petitioner ignores the fact that the Joint Services Board is a separate body politic from both the city and the county and is not a city or county department. (A-10) It is thus true that the Joint Services Board cannot promulgate rules for city or county departments but may only pass rules for Joint Services itself.

Where, as here, there is no suspect classification and no fundamental right is involved, rules may be enacted gradually or step by step. It is permissible if initial rules seek only to partially eliminate any

perceived problem. New Orleans v. Dukes, supra, 427 U.S. at 305. As the Supreme Court recognized, legislative and rule-making bodies have wide latitude in formulating regulations under their police and economic regulation powers. The judgment that one department may need such a no-spouse rule while another does not is one of policy, and this kind of policy is best left to the legislative branch of government. Vance v. Bradley, 440 U.S. 93, 102, (1979), held a court is not to sit as a "superlegislature" and second-guess the legislative policy in situations such as this. New Orleans v. Dukes, supra, at 303.

While Petitioner's brief quarrels with Schoenfeld by reason of several employees who question the efficacy of the objectives, the courts below found there is no real dispute as to the

Board's underlying purpose. (A-12) (Petitioner has inadvertently misquoted the policy under consideration. Petition-38.)

Vance v. Bradley, 440 U.S. 93, (1979) said that where considerations of a burden on a suspect group or a fundamental interest are absent,

> ... courts are reluctant to overturn governmental action on the ground that it denies equal protection of the laws. The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislatures actions were irrational.

Id. page 96-97.

The Petitioner has miscited the case of Yuhas v. Libby-Owens-Ford Co. by

directing the court to the reported district court citation (Petitioner's brief page 11). Actually, the district court was reversed. Please see Yuhas v. Libby-Owens-Ford Co., 562 F.2d 496 (7th Cir. 1977) cert. den. 435 U.S. 934 (1978). The Yuhas case is postured in a Title VII sex discrimination suit where, in an industrial plant setting, the court of appeals upheld a no-spouse rule. One of the reasons offered by the court in Yuhas is even more compelling here in the law enforcement setting:

> First, the marital relationship often generates intense emotions which would interfere with a worker's job performance. The typical employee is often able to temporarily put aside these emotional feelings when he or she goes to work because the work environment is sharply differentiated from the home environment. This distinction becomes impossible if the employee's spouse is also his or her coworker.

Id. at 499.

Public safety is one of the highest objectives of governmental policy that should not be compromised by unnecessary risk-taking. To minimize serious risk the Kenosha Joint Services board adopted a rational no-spouse policy. It is a reasonable no-spouse rule which provides other employment for the job-seeking spouse in the same department, in a different capacity, all in furtherance of a legitimate governmental goal.

C. The No-Spouse Policy Does Not Interfere With the Right To Marry and the Court's Interpretation and Application of Controlling Law Was Correct As a Matter of Law.

The Petitioner challenges the Court of Appeals' conclusion that the Joint Services no-spouse policy did not impinge upon the due process clause of the Fourteenth Amendment. At the trial court level, Heyden predicated her due

process violation charge as "a matter of law violation of substantive due process by interfering with marital relations and interfering with the economic affairs of a husband and wife..." (Appendix A) It appears the Petitioner has backed-off from directly saying that to this Court. However, it seems implicit that the marital status of the Petitioner, and that alone, is the basis for her claim of alleged Constitutional infirmities arising from the Joint Services' no-spouse rule.

In Zablocki v. Redhail, 434 U.S. 374 (1978), the Supreme Court held that the right to marry is a fundamental right and is a liberty protected by the Fourteenth Amendment's Due Process Clause. It went on to emphasize that "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship

may legitimately be imposed." Id. at 386. The Court of Appeals and District Court, in viewing the record in the light most favorable to the Petitioner properly concluded that "... it cannot be said that the Board's no-spouse policy significantly interferes with the right to marry. The policy is a reasonable public safety measure with minimal residual impact on the decision to marry; indeed the policy did not deter the plaintiffs themselves from getting married," citing Califano v. Jobst, 434 U.S. 47, 48-49 (1977); and Zablocki, supra, 434 U.S. at 387, footnote 12." (A-22).

Judge Gordon and the Seventh Circuit Court of Appeals could not help but notice the similarity between the case at bar and Califano v. Jobst, supra, as highlighted in footnote 12 of the Zablocki case. Here, as in

Califano, the joint plaintiffs (Mr. and Mrs. Sebetic) married. Quite different was the statute under consideration in Zablocki, supra, which completely prohibited the plaintiff's right to marry.

D. No Due Process Rights Accrued to Heyden Because She Had No Vested Property Interest In Employment As A Dispatcher

Petitioner Heyden had no enforceable expectation of employment under either Wisconsin law or under a contractual agreement with the Joint Services Board. In Board of Regents v. Roth, 408 U.S. 564 (1972), this Court held that only certain types of interests are accorded due process protection under the Fourteenth Amendment. Whether the due process requirements apply in the first place, a court must look to the nature of the interest at stake and then determine

whether that interest is within the Fourteenth Amendment's protection of liberty and property. Id., 408 U.S. at 570-571. The Fourteenth Amendment's procedural protection of property is a "...safeguard of the security interests that a person has already acquired in specific benefits." Id. 576 (emphasis added). A unilateral expectation of some prospective benefit is not enough. Bishop v. Wood, 426 U.S. 341, 344 (1976).

In this case it was undisputed that Petitioner Heyden was merely an applicant for the position of dispatcher (A-117). She had no enforceable expectation of continued employment.

II. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS NO CONFLICT OF DECISIONS ON THIS MATTER EXISTS.

The decision of the Seventh Circuit Court of Appeals below is entirely consistent with the decisions of other federal courts of appeal, state

courts of last resort and this Court on the issues presented.

Petitioner does not even contend in her brief in support of her Petition for Writ of Certiorari that the Seventh Circuit Court of Appeals decision here is in conflict with either other federal court of appeals decisions or decisions of state courts of last resort, nor does she contend that the decision conflicts with other decisions of this Court. However, she does cite several cases dealing with the marital status issues, namely: Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971); Califano v. Jobst, 434 U.S. 47 (1977); Zablocki v. Richhail, 434 U.S. 374 (1978); Stroud v. Delta Airlines, 544 F.2d 892, reh. den. 548 S. 356, (5th Cir. 1977) cert. den. 434 U.S. 844; Sprogis v. United Air Lines, Inc., 444 F.2d 1194 (7th Cir. 1971); Harper v. Trans. World Air Lines,

Inc., 525 F.2d 409 (8th Cir. 1975); Yuhas v. Libbey-Owens-Ford Co., supra. All of these cases are consistent with the seventh circuit opinion here. Petitioner does not cite any cases on point with which the Court of Appeals' decision now before the Court conflicts.

Califano, Zablocki, Stroud, and Sprogis all involved no-marriage policies or laws, not no-spouse policies such as the one now before the Court. These cases all involved policies which completely forbade marriage to anyone. In the case now before the Court dispatchers are not forbidden from marrying, they are merely prohibited from employment (as dispatchers only) if they are married to a City of Kenosha police officer or a Kenosha County Sheriff's deputy.

The Court of Appeals' decision in the case at bar is consistent with the

only United States Supreme Court decision dealing with a no-spouse policy cited by Petitioner in her brief in support of her petition for writ of certiorari, Phillips v. Martin Marietta Corp., supra. Phillips was a Title VII case in which the Court held employer distinctions based upon marital status could be bona fide occupational qualifications and upheld such distinction.

In Harper, supra, the 8th circuit court of appeals upheld an employment policy forbidding spouses from working in the same department. There is no conflict between the 7th circuit opinion in the case now before the Court and the 8th circuit opinion there.

The 7th Circuit decision in Yuhas, supra, consistent with the decision here, upheld a no-spouse employment rule in a manufacturing plant.

"No-spouse rules involving co-employees have generally been upheld as not constituting sex discrimination . . ." (Petition 10). The 7th Circuit Court of Appeals' decision in the case now before the Court is in no way in conflict with other court decisions on the matter involved, and certiorari should be denied here.

III. NO NEW AND IMPORTANT ISSUE FOR THE SUPREME COURT TO DECIDE.

A. The District Court and Court of Appeals Already Considered Petitioner's Claim of Disparate Impact.

Joint Services hired more females than males as dispatchers ever since its inception. (A-109, 110) Joint Services has more females than males employed as dispatchers now. If the intent of the Joint Services Board was to discriminate against women and employ mostly men as dispatchers, as the Petitioner claims, they certainly are going about it in

reverse order. To take the basic fact that most dispatchers hired are females and try to twist this fact into sex discrimination against females requires the convoluted reasoning found in the petition for certiorari.

The Court of Appeals, after briefs, oral argument and supplemental briefing, carefully considered and rejected the same disparate impact argument which Petitioner argues at length in the petition. The same "facts" were presented. They do not prove invidious intent and such was the finding of the Court of Appeals. (A-12)

Joint Services' policy is not gender-based in the first instance. It applies equally to male or female dispatchers. It is not gender-based in that it clearly applied to any spouse regardless of sex. The district court's reliance on Personnel Administrator of

Mass. v. Feeney, 442 U.S. 256 (1979) is well-placed. The Supreme Court in Feeney upheld a Massachusetts statute which granted an absolute life-time preference to veterans and concluded that this did not discriminate against women in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court reiterated the fundamental constitutional principle that "[w]hen the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern." Id. at 272. Any disparate impact claims are to be analyzed by answering two questions:

1. Whether the statutory classification is indeed neutral in the sense that it is not gender-based; and,

2. If it is not gender-based, whether the adverse effect reflects

invidious gender-based discrimination. Id. at 274.

Interestingly, the Supreme Court, in rejecting the female appellee's position in Feeney, readily distinguished the primary case relied upon by petitioner here in her Equal Protection argument. Yick Wo v. Hopkins, 118 U.S. 356 (1886). See, Feeney, supra, 442 U.S. at 275.

Aside from innuendo, the appellant in this case raises no support for any contention that the Joint Services' rule was intended to discriminate against either women or men. The rule was enacted to ensure public safety, a legitimate government goal. The court's analysis in Yuhas, supra, is particularly appropriate and dispositive of appellant's disparate impact argument.

> The no-spouse rule in this case does not operate as a "built-in

headwind" for women. It is unlike the requirement in Griggs [v. Duke Power Co., 401 U.S. 424 (1971)] that an employee have a high school diploma, or a rule that only the top-ranking contestants on a standardized test will be selected for employment, see United States v. City of Chicago, 549 F.2d 415 (7th Cir. 1977), or the rule in Dothard [v. Rawlinson, 433 U.S. 321 (1977)] that only people of a certain size may be hired. These employment tests all had a discriminatory impact because they focused on personal characteristics which members of a minority group were not as likely to possess, given their environmental or genetic background, as other job applicants. The no-spouse rule, on the other hand, does not place women at a disadvantage because they failed to develop certain personal characteristics as a consequence of their environmental or genetic backgrounds. Rather, the rule's discriminatory impact is the result of the historical fact that in the past far more men than women chose to work in defendant's Ottawa plants, with the result that substantially more than half of the employees in those plants are now men.

. . .

Because the no-spouse rule plausibly improves the work environment, and because it does not penalize women on the basis of their environmental or genetic

> background, we hold that the rule is job related.

562 F.2d at 500 (emphasis added).

Petitioner's attempt to distinguish Yuhas only reinforces its applicability. It is not enough to contend that Joint Services should schedule spouse dispatchers around the work schedules of the Sheriff's Department and Police Department to avoid the risk inherent. Arguably any no-spouse work rule could be "cured" by never having the married couple working at the same time. However, there is no duty to do so and it would be an unworkable situation for Joint Services in this setting (A-128-132).

Petitioner's disparate impact argument is not convincing.

B. The Supreme Court Has Recently Considered And Established The Rule For Evaluating Gender-Basis Equal Protection Attacks On Legislative Rules

In an effort to intrigue the Court to grant certiorari, the petition argues that a new instruction ought to be given to the lower courts on sex-discrimination equal protection cases. As noted previously in this brief, the Michael M., supra, decision refused to apply the "strict scrutiny" standard to gender-based classifications. This Court has held, however, that "the traditional minimum rationality test takes on a somewhat 'sharper focus' when gender-based classifications are challenged." Craig v. Boren, 429 U.S. 190, 210n*, (1976). The Court has restated the appropriate standard such that a gender-based classification will be upheld if it bears a substantial relationship to an important governmental objective. Id., 197.

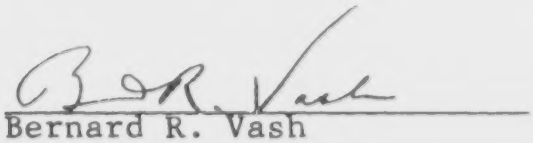
The case at bar offers no

compelling reason to reverse this recent ruling on the standards for review of gender-based classifications which are challenged under the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

The criteria for granting certiorari has not been met by the petitioner. The lower courts correctly found the no-spouse policy to be rationally related to public safety. There is no demonstrated conflict among decisions of the lower courts. This case presents no urgent reasons for granting review.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BEVERLY M. SEBETIC, et al.,

Plaintiffs,

v.

THOMAS P. HAGERTY, et al.,

Defendants.

MOTIONS FOR SUMMARY JUDGMENT AND RESPONSE TO DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

Civil Action No. 84-C-1605

DEBRA HEYDEN,

Plaintiff,

v.

ROGER SCHOENFELD, JOHN D. BILOTTI, JOHN A. SERPE, STANLEY KERKMAN, EUGENE BILOTTI, JAMES FUNK, and DONALD ANDREOLI,

Defendants.

Civil Action No. 84-C-1605

COMES NOW the above captioned plaintiffs, by their duly authorized attorneys, SFASCIOTTI & STERN, by Walter

W. Stern, and requests the honorable Court pursuant to Rule 56 of the Federal Rules of Civil Procedure to grant summary judgment to both plaintiffs, considering the complaints, affidavits, and documents on file herein in the following respects:

1. That the plaintiff, in the case of Beverly M. Sebetic, was terminated and in the case of Debra Heyden was not hired by Joint Services defendants because said plaintiffs were married to deputy sheriffs for Kenosha County.

2. That the only regulation guiding these employment decisions made by the defendants was a husband/wife exclusionary rule dated October 27, 1982, which prohibited hiring as a dispatcher/complaint taker for the Kenosha City and County Joint Services a spouse of any person who was a deputy sheriff for Kenosha County or City of Kenosha Police Officer.

3. That this rule is a denial of Equal Protection of the Law, pursuant to the Fourteenth Amendment to the United States Constitution in that the husband/wife exclusionary rule did not apply to City of Kenosha firefighters, so that two spouses could be dispatcher/ complaint takers while their spouses served as firefighters. The policy does not apply to recordkeepers who also have close daily contact with police officers for the City of Kenosha and Kenosha County Deputies. The policy is arbitrary and capricious, creating an unreasonable classification because it attempts to control employees of Joint Services in terms of the employment of his or her spouse.

4. That, for the reasons more particularly setforth in the affidavits the dispatch equipment provides four separate consoles for law enforcement

agencies, to wit, fire, police, deputy sheriff, and county fire, and both plaintiffs could have reasonably been placed on a console which would not cause even a possibility of any future conflict. There is also a separate desk area provided for a complaint taker which does not dispatch police personnel. There are three different shifts for dispatcher so the plaintiffs could have been placed on different shifts from their spouses to have avoided the drastic economic impact of the defendants' decision pursuant to the arbitrary authority granted under the regulation.

5. The record discloses as a matter of law violation of substantive due process by interfering with marital relations and interfering with the economic affairs of a husband and wife without legitimate reasons or provable concerns contrary to the Due Process

Clause of the Fourteenth Amendment to the United States Constitution.

6. That in accordance with the affidavits, from 1982 to the present dispatcher/complaint takers are predominately women i.e., out of 20 to 21 employees who are dispatcher/complaint takers, there has never been more than 4 men working all three shifts as dispatcher/complaint takers. Because of the disparate impact, and the fact that the Kenosha City Police Department and Kenosha Sheriff's Department are 95% male, the defendants have each committed acts of sexual discrimination against these two plaintiffs. Terminating plaintiff Sebetic and refusing to hire Debra Heyden because of their spousal relationships with deputy sheriffs for Kenosha County constitutes job discrimination. The disparate impact of the defendants' discriminatory acts are violations of the Equal Protection Clause

of the Fourteenth Amendment to the United States Constitution.

7. That, if the Court denies the plaintiffs' request for summary judgment, the plaintiffs request that the Court determine that there are substantial and real factual questions concerning the reasons or justifications for the policy and the manner in which the policy operates both within the Joint Services and as applied to the City and County of Kenosha.

Dated this ___ day of _____, 1987.

Respectfully Submitted,

_____
Walter W. Stern
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